

Imposition of Criminal Sanctions for Narcotics Abuse Below the Minimum Limit

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Abstract: This study aims to examine the legal process of narcotics abuse in Indonesia. The impact of excessive use of narcotics results in central nervous, psychological/psychic damage, and the most fatal is death. The problem in this study examines the development of the narcotics abuse trial process in Indonesia so that it can suppress many cases of narcotics abuse. Cases of drug abuse are often found with sentences below the minimum limit. This study uses normative legal research methods with several approaches, namely the statutory approach and the conceptual approach. Based on the results of these data, this study shows that judges are contrary to the Narcotics Law with an objective minimum standard for violations that endanger society and the state. The judge who examines and adjudicates the case has misapplied the law because he has imposed a sentence with the threat of certain minimum sanctions as stipulated in the laws and regulations. This creates uncertainty in law enforcement which is regulated in the law as it should.

1. Introduction

Drugs, often called illegal drugs, are an abbreviation of Psychotropic Narcotics and other addictive substances. At first, narcotics were developed and used for treatment and research to cure certain diseases. The development of illicit circulation and narcotics abuse has recently become a worrying problem for Indonesians. Because the circulation of narcotics has been thorough at all levels of society without exception.¹ Narcotics abusers use narcotics not for medicinal purposes but to enjoy the effects and temporary pleasure of taking drugs excessively without thinking about the consequences. Narcotics users are associated with crime. They have a negative effect because they have harmed and violated community sentiment.²

The provisions in Law No. 35 of 2009 concerning Narcotics have regulated, supervised, and taken action against narcotics abuse and illicit traffic. Law enforcement for the crime of drug abuse has received many decisions from the Panel of Judges. In deciding cases by the Panel of Judges,

¹ Parawana S Tjanggalo, "ANALISIS KRIMINOLOGI TINDAK PIDANA NARKOTIKA YANG DILAKUKAN OLEH ANAK DI KABUPATEN BONE," (2022), <https://repository.unibos.ac.id/xmlui/handle/123456789/5860>.

² Eleanora, "Bahaya Penyalahgunaan Narkoba Serta Usaha Pencegahan dan Penanggulanganannya (Suatu Tinjauan Teoritis)." *Neliti*, (April 1, 2011). <https://www.neliti.com/id/publications/12297/bahaya-penyalahgunaan-narkoba-serta-usaha-pencegahan-dan-penanggulangannya-suatu>.

there were many sentences below the minimum limit written in Law No. 35 of 2009 concerning narcotics; this problem makes it less effective in eradicating and reducing narcotics crimes.

Criminal sanctions imposed by judges against perpetrators of narcotics crimes are still considered not to give fear. They are influenced by norms outside the legal norm, which are still attached and become a consequent obstacle to law enforcement. Besides that, the judges still often use a minimum system and a maximum specifically in their freedom to impose sentences on criminal offenders. Judges in deciding narcotics cases should be punished according to the applicable provisions. However, in reality, judges tend to set sanctions below the minimum, contrary to the principle of legality as stated in laws and regulations.³

As an example of the decision case number: 222/PID/2021/PT SMR, on Tuesday, 23 February 2021, at 01:00 WITA, he resided in a camp. Summersari district. Barong Tongkok district. West Kutai, Mr. Timor came to invite the co-defendant to buy methamphetamine-type narcotics. The defendant gave Rp. 200,000 (Two hundred thousand rupiahs), while Mr. Timor has Rp. 300,000 (Three hundred thousand rupiahs) in cash. Brother Timor immediately transferred the money through BRI bank Triono, the illegal trafficker. After confirming the money, they planned a meeting to collect the methamphetamine. After the meeting, the defendant and Mr. Timor returned to their respective homes. When he opened the house door, members of the West Kutai Police responded to the defendant and searched. In the defendant's left pocket, they found 1 Tokai brand lighter, and one used Komix pack inside, which contained a piece of clear duct tape containing 1 (one) bag of methamphetamine-type narcotics. Furthermore, the defendant and evidence were taken to the West Kutai Police for further legal proceedings.

In this case, a defendant named Wahyu bin Sarnen was the perpetrator of the crime of narcotics abuse. According to Law Number 35 of 2009 concerning Narcotics, which regulates unlawful acts without the right to possess narcotics class 1, not plants, there is Article 112 paragraph (1), which reads: "Every person without the right to violate the law owns, stores, controls, and supplies narcotics, shall be subject to imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) and a fine of at least Rp. 800,000,000 (eight hundred thousand rupiah) and a maximum of Rp. 8,000,000,000 (eight billion rupiah).

In the above case, the judge handed down Article 112 paragraph (1) to the defendant. However, it is miserable that there has been a conflict between general legal regulations and the judge's decision which imposed a criminal sanction of 2 years in prison and a fine of Rp. 1,000,000,000 (one billion rupiah), provided that if the fine is not paid, it will be replaced with imprisonment for 6 (six) months.⁴

Based on the cases described above, this has raised the issue of efforts to apply the law against the perpetrators of narcotics crimes. The application of criminal sanctions under the minimum penalty to perpetrators of narcotics crimes is contrary to the objectives of the law itself, namely justice, certainty, and expediency.⁵

³ Rendra Yoki Pardede, "Analisis yuridis terhadap penerapan sanksi pidana di bawah ancaman pidana minimum khusus dalam perkara tindak pidana narkotika: Studi Putusan Mahkamah Agung Nomor 775K/Pid.SUS/2020," *Locus: Jurnal Konsep Ilmu Hukum*, (March 2, 2022), <https://jurnal.locusmedia.id/index.php/jkih/article/view/31>.

⁴ Sri Purwatiningsih, "PENYALAHGUNAAN NARKOBA DI INDONESIA," *Populasi* 12, no. 1 (July 19, 2016), <https://doi.org/10.22146/jp.12275>.

⁵ Sadriyah Mansur, "PENJATUHAN PIDANA DI BAWAH ANCAMAN PIDANA MINIMUM DARI KETENTUAN UNDANG-UNDANG NO. 35 TAHUN 2009 TENTANG NARKOTIKA," *Madani Legal Review* 1, no. 1 (June 15, 2017): 83-103, <https://doi.org/10.31850/malrev.v1i1.30>.

With the implementation of a particular minimum criminal system, it is hoped that the perpetrators of narcotics crimes can be subject to severe punishment; this aims to reduce the number of narcotics criminals or narcotics abusers increasing from year to year, where one of the causes is inseparable from the lightness of the decisions handed down by the Panel of Judges, or it can be said that the criminal conviction factor does not have an impact on the perpetrators. Even though it is clear that narcotics have a terrible impact on users. With the above provisions, it is interesting for the author to explore the independence of judges in their role of receiving, examining, and adjudicating a case within their authority, especially for narcotics crimes which explicitly regulate the minimum limit of criminal sanctions.⁶

This study aims to analyze and review narcotics regulations about sanctions below the minimum limit and guidelines for judges in imposing sentences under a particular minimum penalty in narcotics crime cases based on Decision Number 222/PID/2021/PT SMR, which are not by the provisions in Article 112 paragraph I Law Number 35 of 2009 concerning Narcotics as Judges consider imposing criminal sanctions on defendants below the particular minimum limit.

2. Method

The legal research method used to answer the problems in this research is the normative legal research method, which will answer all aspects related to the statutory approach. Moreover, it is also associated with several legal journals, judges' decisions, and other documents supporting the author's research. In order to obtain clarity regarding problem-solving in issues related to the title Juridical Analysis of Imposing Criminal Sanctions for Narcotics Abuse Below the Minimum Limit (Case study case number 222/PID/2021/PT SMR).

3. Judging Consideration in Imposing Criminal Sanctions Below the Minimum Limit

The discussion of the reasons for the judges in the Samarinda High Court for imposing a sentence below the particular maximum limit will then find out that the panel of judges in imposing a sentence below the particular minimum limit of judges has taken into account legal facts which will later lead to the freedom and power of a judge himself so that later it can be seen that the decision handed down by the panel of judges has been appropriate in imposing a sentence and has been directed and oriented towards the principle of legal certainty and the principle of justice which is reflected in the judge's legal considerations.⁷

Based on the legal facts, Defendant had committed a crime by deliberately possessing and controlling the narcotics of the methamphetamine type as in the second subsidiary indictment violating Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. In this decision, the Panel of Judges, in their considerations, stated that about the actions of the Defendant, especially those related to the elements of the offense in Article 112 paragraph (1) letter (a) of the

⁶ Raja Gukguk and Nyoman Serikat Putra Jaya, "TINDAK PIDANA NARKOTIKA SEBAGAI TRANSNASIONAL ORGANIZED CRIME," *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (September 24, 2019): 337-51, <https://doi.org/10.14710/jphi.v1i3.337-351>.

⁷ Aby Maulana "KEBIJAKAN HUKUM PIDANA DALAM PERUMUSAN PLEA BARGAINING SYSTEM PADA PEMBARUAN PERADILAN PIDANA INDONESIA", *Program Doktor Ilmu Hukum FH Univ. Trisakti - Repository UMJ*, n.d., <http://repository.umj.ac.id/13221/>.

Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, namely possessing, storing, controlling or providing, given these elements, is it intended to be used alone, traded or transferred to other parties.

The Panel of Judges as a whole has examined the provisions in the contents of SEMA Number 3 of 2015 concerning the Formulation of criminal chamber law number 1 on narcotics, namely: Judges examine and decide cases must be based on the public prosecutor's indictment (article 182 paragraph 3 and 4 of the Criminal Code). The prosecutor charged with article 112 or article 114 of Law No. 35 of 2009 concerning narcotics. However, based on the legal facts revealed in court, it was proven that they were users, and the number was relatively small (SEMA No. 4 of 2010). The judge decided according to the indictment but could deviate from the provisions of the particular minimum crime by making sufficient considerations.

They see from the theory of punishment that the purpose of the theory is to want an improvement in human beings or those who commit crimes, incredibly minor offenses. Whereas in other offenses, it is considered that it can damage the social life of the community, and it is seen that the criminal can no longer be corrected, then the nature of deterrence or retaliation from a sentence cannot be avoided. The Panel of Judges, in imposing a sentence, also bases it on the theory of punishment because the theory of punishment is not only retaliation but also a tool to improve human actions to be good and acceptable in society. Again, therefore judges' sentences below the minimum standard specifically for this crime to correct perpetrators of abuse and eradicate Narcotics crimes.⁸

The Panel of Judges also decides on crimes below the particular minimum limit based on the theory of judge freedom because in deciding a case, the judge has complete freedom in Article 24 paragraph (1) of the 1945 Constitution, which stipulates that: Judicial Power is an independent power to administer justice in order to uphold law and justice.

In carrying out their duties of judicial power, judges may not be bound by anything or pressured by anyone but are free to do anything. Interpreting the meaning of such freedom is called individual freedom or extensive freedom. Suppose the freedom of this judge is linked to the decision of the high court panel of judges in a narcotics case with register number 222/PID/2021/PT SMR. In principle, the judge imposes a sentence below the particular minimum specified in the Narcotics Law based on the weight of the defendant's guilt. In deciding a case, the judge may not be bound by anything, including particular maximum and special minimum criminal sanctions in Law Number 35 of 2009, because the primary goal of judges is the value of justice. In this case, the judge imposed a special minimum criminal sanction because, based on the legal facts revealed in the trial, the defendant was proven to be only a narcotics abuser and not a dealer.

If we look at the decision in more depth, is it oriented towards the principles of legal certainty and justice? Then this can be reflected in the judge's legal considerations. With legal facts, the judge, with the freedom and principle of independent society, has violated the special minimum criminal provisions even though basically in the process of determining, the public prosecutor did not charge the defendant with the provisions of Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

⁸ Deni Setya Bagus Yuherawan and Baiq Salimatul Rosdiana, "KETIDAKTEPATAN PENJATUHAN PIDANA PENJARA TERHADAP PENYALAHGUNA NARKOTIKA," *Jurnal Ius Constituendum*, October 19, 2020, <https://doi.org/10.26623/jic.v5i2.2207>.

Of course, in this case, the panel of judges has reflected the values of legal certainty, which can be seen that existing legal provisions still guide the panel of judges and have also prioritized justice which is reflected in their decision that, according to the legal facts revealed at trial, it is known that the defendant is a narcotics abuser and is not involved in the illicit trade of narcotics. We know that the value of justice cannot be measured in terms of parameters. However, in this case, the author tries to examine more deeply that justice in a decision is reflected when there is a point of contact or synergy between the provisions of the law and the legal facts revealed in the trial so that it narrows to the judge's objective assessment. By adhering to this, the panel of judges broke through the criminal provisions in law number 35 of 2009 concerning narcotics and imposed sentences below the minimum limit.⁹

4. Juridical Analysis Regarding the Imposition of Criminal Sanctions Below the Specific Minimum Limit in The Decision

4.1 Juridical Analysis on the Application of Criminal Sanctions Below the Special Limit in Cases of Narcotics Crime

The panel of judges in the Decision on Case Number 222/PID/2021/PT SMR based on the legal facts that had been revealed in the trial and the legal assessment of the Panel of Judges in deciding that the actions of the defendant fulfilled the elements of Article 112 paragraph (1) of Law Number 35 of 2009 Concerning Narcotics. The elements are: 1) Everyone; 2) Without rights or against the law; and 3) Offering for sale, selling, buying, receiving, acting as an intermediary in terms of buying and selling, exchanging, or handing over Narcotics Group I.

Fulfillment of the above elements, the Samarinda High Court Decision Case Number 222/PID/2021/PT SMR stated that the defendant Wahyudi had been proven legally and convincingly to have committed a crime of narcotics without rights and against the law of Narcotics Class I, not plants and had been sentenced to the defendant with a prison sentence of 2 (two) years and a fine of Rp. 1,000,000,000.00,- (one billion rupiah) with the provision that it will be subject to 6 (six) months imprisonment if it is not paid.

The judge's decision that decides below the minimum has resulted in an inconsistency in the decision stipulated in the law. Therefore, legal inconsistency can be understood as disobedience to the law that applies to Law Number 35 of 2009 concerning Narcotics. Imposing criminal sanctions on ideal decisions can provide a sense of legal certainty and a sense of justice in society. Suppose there is no consistency in deciding clear specific criminal cases. In that case, the rules stipulated in the law will create a sense of injustice and legal uncertainty in society.

4.2 Juridical Analysis of the Application of Article 112 of Law Number 35 of 2009 Concerning Narcotics

Article 112 of Law Number 35 of 2009 concerning Narcotics results in multiple interpretations and creates legal uncertainty in its application. Legal certainty is a characteristic that cannot be

⁹ Maudy Pritha Amanda, Sahadi Humaedi, and Meilanny Budiarti Santoso, "PENYALAHGUNAAN NARKOBA DI KALANGAN REMAJA (ADOLESCENT SUBSTANCE ABUSE)," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 4, no. 2 (July 31, 2017), <https://doi.org/10.24198/jppm.v4i2.14392>.

separated from the law itself, primarily written law; the law will lose its meaning if a legal certainty does not accompany it because the law cannot be used as a guideline for behavior for everyone in other words that there is no law if there is no legal certainty. However, the problem of applying Article 112 can be resolved by applying the logische specialties principle. To determine the provisions (articles) to be applied in/in a particular law, the logische specialties principle applies, which can be interpreted as logical specificity. That is, criminal provisions are said to be specific if these criminal provisions, in addition to containing other specific elements, also contain all elements of general criminal provisions.

The specificity of these special criminal provisions can also lie in their aggravating or mitigating characteristics. In order to be called a specific criminal provision, a criminal provision does not always have to contain all the elements of a general criminal provision. Criminal provisions do not contain any element of a general criminal provision, nor do they even mention the qualifications of the crimes intended in the said criminal provisions. They only mention the articles of the intended crimes. However, these criminal provisions must also be seen as specific criminal provisions.

In achieving legal certainty, it is necessary to know the results of laboratory analysis; if it is found that urine contains a type of narcotics, then it is declared as an abuser and subject to Article 127, which can be specifically enforced, and not Article 112 of Law Number 35 of 2009 concerning narcotics. If no positive results are found containing narcotics in the defendant's urine, then Article 112 can be imposed as the owner, depositor, control, and provider of narcotics.

5. Conclusion

The judge's consideration in imposing criminal sanctions below the minimum limit with the provisions of Article 112 paragraph 1 no 35 of 2009, the narcotics law has been applied. Seeing from the judge's considerations that the defendant legally possessed narcotics class 1, which is of the methamphetamine type, but on the urine examination, the defendant was negative for methamphetamine, and during the examination of the case that the defendant was the person invited, persuaded to buy the narcotics jointly. Possession of methamphetamine narcotics was used by the defendant for himself, so from being considered in imposing criminal sanctions, the judge weighed and decided that the defendant was sentenced to below the minimum limit.

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