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LEGAL ANALYSIS OF JUDGES' CONSIDERATIONS IN IMPOSING LIGHT CRIMINAL SANCTIONS ON DRUGS USERS (Analysis of Supreme Court Decision Number 758 K/Pid.Sus/2020)

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ABSTRACT

Law enforcement against narcotics crimes has been widely carried out by law enforcers, and many perpetrators have also been sentenced by court decisions and served their sentences in correctional institutions. The results of the study indicate that the criminal law regulation for drug users based on Law Number 35 of 2009 concerning Narcotics prioritizes rehabilitation for drug users, but the criminal sanctions for drug dealers and precursors are very high. The spirit and purpose of Law Number 35 of 2009 concerning Narcotics is to prevent and eradicate the illicit trafficking of narcotics in Indonesia. The policy of formulating criminal sanctions for perpetrators of narcotics crimes in Law Number 35 of 2009 concerning Narcotics is a penal policy in the law, including criminalization policies, qualifications of criminal acts, formulation of criminal sanctions, minimum criminal threats of attempted, assistance and conspiracy, corporate criminal liability.

1. Introduction

As drug abuse continues to rise, the government has taken firm action against drug syndicates and dealers by imposing harsh penalties, even up to the death penalty. For victims of drug use or addiction, the government has sought to mitigate the negative impacts of drug use by providing rehabilitation facilities, both medical and social. This is done so that drug users can recover, become productive individuals, be able to work, provide for themselves and their families, and become a healthy and strong generation.

Drug users can be distinguished between drug addicts and victims of drug abuse. A drug addict is someone who uses or abuses drugs and is dependent on them, either physically or psychologically. A victim of drug abuse is someone who unintentionally uses drugs, due to being persuaded, tricked, deceived, coerced, and/or threatened into using drugs.

Indonesia is currently facing a highly alarming narcotics problem, with more than four million people already using narcotics, compounded by the

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widespread circulation of illegal drugs, both synthetic and natural, and newer forms. Numerous efforts, particularly by law enforcement, have been made to address the narcotics problem in Indonesia, yet the number of drug addicts has not decreased, and in fact, it is increasing.

One contributing factor to this unresolved problem is the public's perception of drug users as criminals, social outcasts, and various other stigmas, leading to imprisonment. This authority implicitly recognizes that victims of drug abuse are not only perpetrators of the crime but also victims of the crime itself, a phenomenon often referred to as self-victimization or victimless crime.

This is crucial for the implementation of Article 54 of Law No. 35 of 2009 concerning Narcotics, which mandates that drug addicts undergo medical and social rehabilitation. This connection is expected to result in drug abusers being charged solely with the abuse article (Article 127 of Law No. 35 of 2009 concerning Narcotics), and judges will then use Article 103 of Law No. 35 of 2009 concerning Narcotics, which allows judges to order addicts to undergo rehabilitation.

Current developments in the world indicate a strong shift in the perception of drug users, who are no longer viewed as criminals but as victims or patients who deserve empathy. If a drug addict has been found guilty by a judge for a drug-related offense, to provide them with an opportunity to recover from their addiction, the judge may order them to undergo treatment and/or care.

Similarly, if the drug addict is not found guilty of a drug-related offense, meaning they were merely a drug user who succumbed to persuasion, the judge may order them to undergo treatment and/or care.

The judge gave a verdict against a user of methamphetamine based on the judge's considerations and beliefs as in the case of Decision Number 758 K/Pid.Sus/2020 with the defendant Rico Rizky Siregar alias Rico, the judge gave a lighter verdict compared to the demands of the Public Prosecutor who demanded imprisonment for 8 (eight) years reduced during the defendant's time in detention and a fine of IDR 800,000,000.00 (eight hundred million rupiah) subsidiary to 6 (six) months in prison due to the use of methamphetamine.

2. Research Method

This paper employs normative legal research. This research is descriptive and analytical, revealing laws and regulations related to the legal theories that are the object of the study.

Descriptive and analytical methods are used to describe a current or ongoing condition or situation. The goal is to provide as accurate data as possible

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regarding the research object, allowing for the exploration of ideals and then analysis based on applicable legal theory or legislation.

This research utilizes materials obtained from library research. Secondary data, including primary, secondary, and tertiary legal materials, were collected from library research. In normative research, the data required is secondary data. This secondary data has a very broad scope, encompassing personal letters, diaries, and official documents issued by the government.

Data collection focused on the underlying problem, ensuring that the research avoids any deviations or ambiguities in the discussion. Data collection in this study utilized both primary and secondary data.

To obtain objective results that can be proven to be true and whose results can be accounted for, the data in this study was obtained using data collection tools that were carried out using a method, namely library research, namely research carried out by collecting data by reviewing library materials or secondary data which include primary legal materials, secondary legal materials and tertiary legal materials.

3. Results And Discussion

Results

Drug crimes are punishable by law. Therefore, several countries believe that a person's actions and mental state can be combined and constitute a condition for a punishable act. This is in line with the requirements for punishment (strafvoraus setzungen), which prioritize the existence of a criminal act. Once a criminal act is determined as defined by law, the mental state or intention of the perpetrator (mens rea) is investigated.

Legal policies that will be or have been implemented nationally by the government also include an understanding of how politics influences law by examining the configuration of forces behind the creation and enforcement of the law. Here, law cannot be viewed solely as imperative or mandatory articles, but rather as a subsystem that, in reality, is likely to be heavily influenced by politics, both in the formulation of its material and articles, as well as in its implementation and enforcement. Criminal law policy is essentially about how to formulate criminal law effectively and provide guidance to lawmakers (judicial policy) and implementers (executive policy). Implementing criminal law policy means selecting the best criminal legislation, in terms of meeting the requirements of justice and efficacy, or striving to create criminal legislation that is appropriate to the circumstances and situations at a given time and for the future.

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In essence, criminal law policy is not merely a matter of legislative technique that can be conducted through normative and dogmatic juridical means. In addition to a normative juridical approach, criminal law policy also requires sociological, historical, and comparative approaches. It even requires a comprehensive approach from various other social disciplines and an integrated approach to social policy and national development in general.

Efforts to create sound criminal law legislation cannot be separated from the goal of crime prevention itself. Efforts or policies to prevent and address crime fall within the realm of criminal policy. Therefore, criminal law policy or policy is part of criminal policy or policy.

To address criminal acts, if criminal law is chosen as the means to achieve these goals, criminal law policy must be inseparable from the broader policy objectives, namely criminal policy. Criminal law policy is a subsystem of criminal policy, so it is natural that the objectives of criminal law policy cannot be separated from the objectives of criminal policy. Criminal policy itself is a subsystem of the broader policy, namely law enforcement efforts, also known as law enforcement policy.

While laws and regulations governing narcotics have been formulated and enforced, drug-related crimes have not been reduced. Recent cases have seen numerous drug dealers and distributors arrested and given severe sanctions, including the death penalty, including execution by firing squad. However, other perpetrators seem to ignore this and are even more inclined to expand their operations.

4. Discussion

Criminal policies against narcotics in Indonesia must be implemented in accordance with the basic concepts of criminalization. These criminal policies must be part of social policy or national development policy. He emphasized that crime prevention efforts and social planning need to be integrated into overall social policy and development planning. Sudarto stated that if criminal law is to be involved in efforts to address the negative aspects of societal development (modernization), it must be viewed in relation to the overall criminal policy or social defense planning, and this must also be an integral part of national development planning.

Based on the legal facts, it is clear that the defendant did not have a permit or document stating that he had the right to sell, buy, receive, act as an intermediary in the sale, exchange, or transfer of Schedule I narcotics. This is related to the facts revealed at the trial on Saturday, January 19, 2019, at

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approximately 4:30 p.m. WIB. In Sumber Sari Hamlet, Perbaungan Village, Bilah Hulu District, Labuhanbatu Regency, the defendant was arrested by witness Endar Muda Rambe and his colleague, witness Parlindungan Simanjuntak (a member of the Bilah Hulu Police, Labuhanbatu Resort) for possession of methamphetamine.

The narcotics recovered from the defendant tested positive for methamphetamine and are classified as Schedule I Narcotics Number 61, Attachment I of the Narcotics Law, as stated in the Narcotics Evidence Laboratory Analysis Report for the Medan Branch. The defendant also did not have a permit from the authorities to possess the methamphetamine. Therefore, based on the aforementioned considerations, the element of "without rights" or "unlawful" has been fulfilled.

"Owning" means possessing (having the right to possess something), "keeping" means placing it in a safe place to prevent damage, loss, etc., "controlling" means having power over something, while "providing" means preparing everything. The definition of a plant is something planted that can live, grow, and develop, whereas methamphetamine is not something planted that can live, grow, and develop, so methamphetamine is included in the non-plant category.

All elements of Article 112 paragraph (1) of the Narcotics Law as stated in the Public Prosecutor's subsidiary charges have been met, and the Panel of Judges has found the defendants guilty of committing a crime. Therefore, the defendant must be declared legally and convincingly proven guilty of possessing methamphetamine, with evidence in the form of 1 (one) plastic clip-on package containing methamphetamine with a net weight of 0.06 (zero point zero six) grams, and the defendant admitted that the goods were his.

The charges submitted are alternative charges, where the Judge can choose one of the three charges submitted. An indication of the existence of alternative charges is the presence of 2 (two) charges submitted by the Public Prosecutor (JPU) in his indictment, from which the Judge can choose one of the charges. The selection of one of the charges in the alternative charges cannot be done arbitrarily. Despite having jurisdiction over the trial, the judge cannot decide on any charge at will.

The choice of charges to support the legal considerations in the trial must be aligned with the facts and evidence obtained during the trial. The public prosecutor's purpose in using this alternative indictment is to prevent the perpetrator from escaping legal responsibility and, secondly, to provide the judge with the option of applying the most appropriate law to the perpetrator.

During the trial, no justification or excuse for the defendants' actions was found that could eliminate the criminal charges against them. Therefore, the

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defendants were found capable of being held responsible for their actions. Therefore, the defendants must be sentenced commensurate with their crimes, as determined in this verdict.

The application of criminal law in Supreme Court Decision No. 758 K/Pid.Sus/2020 is consistent with the offense committed by the defendant, and its elements are consistent with the definition of the offense. The judge's rationale in issuing a decision can be used as analytical material to determine the judge's orientation in making the decision. It is also crucial to determine how the decision is relevant to the established objectives of sentencing. In general, a judge's decision that is not based on the correct orientation, meaning it does not align with the established objectives of sentencing, will negatively impact the crime prevention process itself and will not benefit the convict.

Judges have the freedom to independently consider the severity of imprisonment for the decisions they handle. This freedom is absolute and unimpeded by other parties. This ensures that court decisions are truly objective. The judge's freedom to determine the severity of imprisonment must also be guided by the maximum and minimum limits. This freedom must be based on a sense of justice for both the defendant and society, and on a sense of responsibility to God Almighty. The evidence presented in court must be interconnected. This ensures the judge can prove that the defendant committed the crime. However, if the evidence presented in court differs from one another and is not related to the other, it can lead to uncertainty among the judge.

A defendant can be convicted if the trial proves legally and convincingly that they have committed a crime. Therefore, during the trial, the judge must cite the defendant's actions, which align with the facts revealed during the trial and meet the requirements of specific articles of the law.

In making a decision, the judge considers legal considerations, including the prosecutor's indictment, the defendant's testimony, witness testimony, evidence, and articles of the criminal code. Furthermore, the judge must consider non-legal considerations, including the background of the defendant's actions, the consequences of the actions, the defendant's circumstances, and the defendant's economic situation. Furthermore, the judge must be convinced of the defendant's criminal conduct, as outlined in the elements of the crime charged.

The formulation of charges is based on the results of the preliminary examination, which can be structured as a single, cumulative, alternative, or subsidiary charge. A single charge is formulated if one or more individuals likely committed only one act, for example, simply as a user. However, if more than one act, such as when arrested for using narcotics and a firearm is also found, the charges are formulated cumulatively.

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Alternative charges are formulated when the public prosecutor is unsure which criminal law to apply to an act they deem proven. The indictment, in which each crime is formulated, excludes each other, and allows the court to determine which charge is most appropriate for holding the defendant accountable for the crime. The indictment usually includes the word "or."

Criminal charges typically state the types and severity of the crimes or actions the public prosecutor is seeking to impose on the defendant, explaining that the public prosecutor has filed the aforementioned criminal charges because the defendant has been proven to have committed the crime.

5. Conclusion

The criminal law provisions for drug users under Law Number 35 of 2009 concerning Narcotics prioritize rehabilitation for drug users, but impose very high criminal penalties for drug dealers and precursors. The spirit and purpose of Law Number 35 of 2009 concerning Narcotics is to prevent and eradicate the illicit trafficking of narcotics in Indonesia.

The policy for formulating criminal sanctions for perpetrators of drug crimes under Law Number 35 of 2009 concerning Narcotics constitutes a penal policy within the law, including policies on criminalization, classification of criminal offenses, formulation of criminal sanctions, minimum penalties for attempted offenses, assistance and conspiracy, and corporate criminal liability.

The judge's legal considerations for imposing sanctions on users of methamphetamine in the Supreme Court decision Number 758 K/Pid.Sus/2020 are in accordance with the subsidiary charges from the Public Prosecutor and have fulfilled the elements of Article 112 paragraph (1) of Law No. 35 of 2009 concerning narcotics and there are no justifications or excuses for the actions carried out by the defendant and the author agrees with the judge's decision because the defendant's actions are disturbing the community because the circulation of narcotics in Labuhanbatu Regency is increasing.

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