

JUDGES' CONSIDERATIONS IN DECIDING CRIMINAL ACTS OF CLASS 1 ARCOTIC ABUSE FOR YOURSELF (CASE STUDY Number 1/Pid.Sus-Anak/2019/PN Lbp PN LUBUK PAKAM)

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Keywords	Abstract. Narcotics abuse no longer looks at age, ranging from children, teenagers, adults to the elderly even though they are not free from the trap of narcotics abuse. It is estimated that around 1.5 percent of the total population of Indonesia are victims of narcotics abuse. The problem of narcotics circulation is no less worrying, because it does not only occur in big cities but also reaches remote parts of Indonesia. Misuse of psychotropic substances can lead to a dependency syndrome if their use is not under the supervision and guidance of health workers who have the expertise and authority to do so. The reality in society shows that psychotropics should be used in health services and science has been abused. The use of this substance is out of bounds, which is generally intended for temporary pleasure. This causes people who are addicted to psychotropics to increase. The demand for psychotropics in the black market is also getting bigger. The crime rate that arises from the urge to get psychotropics as well as those that occur after someone consumes them also increases. This research method is normative juridical which will explore various secondary literatures consisting of legislation, regulations, books, journals and papers related to patents. The author uses a normative juridical method because the target of this research is law and rule. The definition of rules includes, legal principles, rules in a narrow sense and concrete legal regulations. This normative juridical research method aims to find coherent truth through deductive reasoning. Deductive way of thinking means research will depart from a specific idea. Data collection methods are through: questionnaires, interviews, observations, exams (tests), documentation, and others. Researchers can use one or a combination of techniques depending on the problem at hand or being studied. The results of the study stated that the child of BAYU SETIAWAN, Als. ARIF IRAWAN, had been legally and convincingly proven guilty of committing the crime of "Narcotics Abuser Group I for himself"; Imposing a criminal sentence to the child therefore with imprisonment for 7 (seven) months; Determine the period of arrest and the period of detention that the child has served is completely deducted from the sentence imposed; Determine that the child remains in detention; Stating evidence in the form of: 1 (one) small plastic clip pack containing methamphetamine with a net weight of 0.04 (zero point zero four) grams.
Judge's Consideration, Narcotics Abuse Category 1 For Yourself, Number 1/Pid.SusAnak/2019/Pn Lbp	
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1. INTRODUCTION

With a very large population, exceeding 200 million, Indonesia is a potential market for illicit narcotics trafficking. At first, Indonesia was only a stopover for narcotics trafficking traffic, due to its strategic location. Gradually these narcotics traffickers began to make Indonesia a target market for distributing narcotics. Over time, Indonesia began to transform, not only as a place for narcotics circulation but also as a place to produce narcotics. This is proven by the discovery of several narcotics laboratories in the territory of Indonesia. Narcotics and psychotropics are drugs or materials that are useful in the fields of treatment, health services, and scientific development, and on the other hand can

cause very detrimental dependence if used without control, strict and careful supervision.

Narcotic substances were originally shown for medicinal purposes, but with the development of science and technology, many types of narcotics can be processed and their functions can also be misused. Currently, Indonesia is not only a transit country or a destination country for the illicit traffic of psychotropic substances, but has developed into a producing country.³ Psychotropic cases are even more surprising to the public, because psychotropic problems have spread everywhere. At first it was only found in big cities but now it has spread to small towns, to residential areas, campuses and even schools. The circulation and use of psychotropics has also penetrated all levels, both the upper, middle and lower classes. In addition, the circulation of psychotropic substances has also penetrated, starting from children, students, artists, officials and even security forces.

The current phenomenon is that narcotics cases are developing rapidly and rapidly along with the freedom that has hit the Indonesian nation. Then related to freedom, the decline in moral values and the lack of attention or control that is getting weaker towards the nation's young generation and so on. In order to overcome the dangers of psychotropics, the Government has issued Law Number 5 of 1997 concerning Psychotropics. The establishment of Law Number 5 of 1997 concerning Psychotropics cannot be separated from the existence of various conventions, namely:

- a. Psychotropic Convention 1971 (Convention on Psychotropic Substance 1971) and,
- b. 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The international community has taken steps to control psychotropics on the basis of the two conventions above. In addition, Indonesia has ratified the 1971 Psychotropic Convention with Law Number 8 of 1996 concerning the Ratification of the 1971 Convention on Psychotropic Substances. The rise of crimes or criminal acts related to narcotics and narcotics precursors, as people have heard or read about from the mass media, need serious attention. The rate of development of crime cases in question is growing rapidly from year to year even though there are regulations governing the circulation of narcotics. It can be concluded that narcotics crime is not a crime that is local in nature (certain areas only), but has spread to all corners of the territory of Indonesia.

It should be realized that narcotics in this country does not only penetrate at the level of adults, but also from teenagers to minors. Narcotics, psychotropic substances and other addictive substances commonly referred to as drugs are types of drugs or substances needed in the world of medicine. If used without restrictions and careful supervision, it can cause dependence and can endanger the health and even the soul of the wearer. Criminalization of narcotics addicts is not able to reduce narcotics abuse. Addicts who have attended training in Correctional Institutions as the implementation of criminal sanctions for narcotics abuse when they leave, it turns out that many have not changed, even their use of narcotics is increasing.

Misuse of psychotropic substances can lead to a dependency syndrome if their use is not under the supervision and guidance of health workers who have the expertise and authority to do so. The reality in society shows that psychotropics should be used in health services and science has been abused. The use of this substance is beyond the limit, which is generally intended to obtain temporary pleasure. This causes people who are addicted to psychotropics to increase. The demand for psychotropics in the black market is also getting bigger. The crime rate that arises from the urge to get psychotropics as well as those that occur after someone consumes them also increases.

Another phenomenon that occurs is that the problem that then arises in the implementation of criminal sanctions is that if the fine is not paid, it will be subject to imprisonment in lieu of a fine. In this case the Psychotropic Law does not regulate these provisions, so the general provisions in the Criminal Code apply by remembering Article 103 of the Criminal Code. Article 103 of the Criminal Code states that:

"The provisions in Chapters I to VIII of this book also apply to acts which are punishable by other laws and regulations, unless the law provides otherwise." Based on the description above, I am interested in conducting research with the title "Judges' considerations in deciding the criminal case of Narcotics Abuse Group 1 for myself (Case Study of the Lubuk Pakam District Court Deli Serdang, North Sumatra)." From the explanation of the background above, the formulation of the problem can be taken as follows: What is the basis for the judge's consideration in the criminal case of narcotics abuse

of class 1 for yourself? What are the criminal sanctions for Narcotics Sellers and Couriers at the Lubuk Pakan District Court, Deli Serandang Regency?

2. METHOD

In legal research, there are two types of research, namely normative (doctrinal) research and empirical research. The type of research used in the preparation of this thesis is a combination of normative (doctrinal) research and empirical research. Research design is a proposal to solve problems and is an activity plan made by researchers to solve problems, so that valid data will be obtained in accordance with research objectives. This research method is normative juridical which will explore from various secondary literature consisting of legislation, regulations, books, journals and papers relating to Patents. The author uses a normative juridical method because the target of this research is law and rule. The definition of rules includes, legal principles, rules in the narrow sense and concrete legal regulations. This normative juridical research method aims to find coherent truth through deductive reasoning. Deductive thinking means that research will start from a specific idea

The location of data collection in this study was at the Lubuk Pakam District Court, Deliserdang Regency. The time in this research is starting from December 2020 to April 2021.

Data collection methods are techniques or methods that can be used by researchers for data collection. Techniques for pointing out a word that is abstract and not embodied in objects, but can only be seen in its use through: questionnaires, interviews, observations, exams (tests), documentation, and others. Researchers can use one or a combination of techniques depending on the problem at hand or being studied.

The data analysis technique used in this legal research uses qualitative analysis. A qualitative approach is an approach that discusses ways to analyze the data collected by using methods or analysis or legal interpretation known, as authentic interpretation, interpretation according to grammar (grammatical), interpretation based on the history of legislation, systematic interpretation, sociological interpretation, teleological interpretation, or functional interpretation

3. RESULTS AND DISCUSSION

What is the basis for the judge's consideration in the criminal case of narcotics abuse group 1 for yourself.

In Indonesia, the principle of freedom of judges is fully guaranteed in Law Number 48 of 2009 concerning Judicial Power, hereinafter referred to as the Law on Judicial Power, where it is formulated that judicial power is the power of an independent state to administer justice to uphold law and justice. The principle of freedom of judges includes the freedom for judges to formulate legal considerations, known as legal reasoning, which is carried out by a judge in deciding a case he is trying.

According to the Law on Judicial Power, judges' considerations are the thoughts or opinions of judges in making decisions by looking at things that can relieve or burden the perpetrator. Each judge is obliged to submit written considerations or opinions on the case being examined and become an inseparable part of the decision.

The judge is the personification of the judiciary, in making decisions on a case, apart from being required to have intellectual abilities, a judge must also have high morals and integrity so that it is expected to reflect a sense of justice, guarantee legal certainty and can provide benefits to the community.

Based on Article 53 of the Law on Judicial Power, it reads:

- (1) In examining and deciding cases, judges are responsible for the decisions and decisions they make.
- (2) The stipulation and decision as referred to in paragraph (1) must contain the judge's legal considerations based on the right and correct reasons and legal basis.

This is the legal basis for a judge in carrying out his duty to decide a case, that it must be based on various considerations that can be accepted by all parties and do not deviate from existing legal rules, which is called legal considerations or legal reasoning.

For judges, legal reasoning is useful in making judgments in deciding a case. A judge before

making his decision must pay attention and try how much he can lest the decision to be handed down allows new cases to arise. The decision must be complete and not lead to a new case. The task of the judge does not stop with making a decision, but also completes it until its implementation. In civil cases, judges must assist justice seekers and try their best to overcome all obstacles and obstacles in order to achieve a simple, fast and low cost trial.

The judge in making a decision in a court session may consider several aspects:

- a. Errors of perpetrators of criminal acts;
- b. The motive and purpose of committing a crime;
- c. How to commit a crime;
- d. The inner attitude of the perpetrator of the crime;
- e. Curriculum vitae and socio-economics;
- f. Attitudes and actions of the perpetrator after committing a crime;
- g. The effect of the crime on the future of the perpetrator;
- h. The public's view of the crime committed by the perpetrator.

Article 50 of the Judicial Power Act, reads:

- (1) Court decisions must not only contain the reasons and basis for the decision, but also contain certain articles from the relevant legislation or unwritten legal sources that are used as the basis for adjudicating.
- (2) Each court decision must be signed by the chairman and the judge who decides and the clerk who participates in the session.

Judges in deciding a case must consider the juridical truth, philosophical and sociological truth. Juridical truth means that the legal basis used has fulfilled the applicable legal provisions. Philosophical truth means that the judge must consider the side of justice whether the judge has done and acted fairly in deciding a case. Sociological considerations mean that judges must also consider whether their decisions will have a bad impact and impact on society, in other words that a judge must make fair and wise decisions by considering the legal impact and impacts that occur in society.

The sentencing of the perpetrators must look at the mistakes made. This is based on the principle of error. The terms of punishment in a decision depart from two very fundamental pillars, namely the principle of legality which is a social principle and the principle of guilt which is a humanitarian principle.

Considering, that in the provisions of Article 59 of Law Number 23 of 2002 concerning Child Protection, among other things it has been determined that "The government and other institutions are obliged and responsible to provide special protection to children who are in conflict with the law, children who are victims of drug abuse, alcohol abuse, etc. psychotropic substances and other addictive substances", the provisions of which are reaffirmed in the provisions of Article 64 paragraphs (1) and (2) of Law Number 23 of 2002 concerning Child Protection which essentially reaffirms that the obligation of the government and society to provide special protection to children dealing with the implementation, among others, through the treatment of children in a humane manner in accordance with the dignity and rights of the child;

Considering, that furthermore, after considering all the results of the examination of this case as mentioned above, the Judge agrees with the Public Prosecutor regarding the qualifications of the guilt committed by the Child, however the Judge does not agree with the length of time the Child has been sentenced to 1 (one) year as demanded by the Public Prosecutor. , this is based on the consideration that the child has regretted his actions and promised not to repeat his actions, where based on the facts of the trial, the judge had the impression that the child had a desire to correct his actions, besides that the child's biological father declared his ability to educate the child, In addition, in Article 79 paragraph (3) of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is expressly determined that the special minimum imprisonment does not apply to children, moreover judges in imposing a sentence must also consider the sense of justice for children and society. In addition, the purpose of punishment is not merely revenge but as a preventive and repressive effort so that the child can reflect on his next act, more specifically the punishment imposed is not to reduce

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human status, but is educational, motivational so that the child does not do the act again as well as preventive for the child. other communities, therefore, the child must be sentenced to a crime as stated in this decision; Moreover, the judge in imposing a sentence must also consider the sense of justice for the child and the community. In addition, the purpose of sentencing is not merely a retaliation but as a preventive and repressive effort so that the child can reflect on his next act, more specifically, the sentence imposed is not to reduce human status, it will but it is educative, motivated so that the child does not commit the act again and is preventive for other communities, therefore the child must be sentenced to a crime as stated in this decision; Moreover, the judge in imposing a sentence must also consider the sense of justice for the child and the community. In addition, the purpose of sentencing is not merely a retaliation but as a preventive and repressive effort so that the child can reflect on his next act, more specifically, the sentence imposed is not to reduce human status, it will but it is educative, motivated so that the child does not commit the act again and is preventive for other communities, therefore the child must be sentenced to a crime as stated in this decision; more specifically, the punishment imposed is not to reduce human dignity, but is educational, motivational so that the child does not commit the act again and is preventive for other communities. Therefore, the child must be punished as stated in this verdict; more specifically, the punishment imposed is not to reduce human dignity, but is educational, motivational so that the child does not commit the act again and is preventive for other communities. Therefore, the child must be punished as stated in this verdict;

Considering, whereas before imposing a sentence on a Child, first consider the aggravating matters and mitigating matters for the Child;

AFFECTING THINGS:

- Children's actions are very contrary to the government's program in eradicating drugs;

IMPORTANT THINGS:

- Children regret their actions;
- The child confessed frankly so as to facilitate the examination process at the Court;
- The child is polite in court and the child has never been punished;
- Children are still young (children) who are expected to change attitudes for the better in the future;

What are the criminal sanctions for sellers and couriers of narcotics circulation at the Lubuk Pakam District Court, Deli Serandang Regency?

Basis for Judges' considerations in making court decisions need to be based on theory and interrelated research results 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 principal powers of the judiciary are regulated in the 1945 Constitution Chapter IX Articles 24 and 25 as well as in Law Number 48 of 2009. The 1945 Constitution guarantees the existence of an independent judicial power. This is explicitly stated in Article 24, especially in the explanation of Article 24 paragraph (1) and the explanation of Article 1 paragraph (1) of Law Number 48 of 2009, In accordance with the meaning of Article 1 point 1 of Law Number 35 of 2009, what is meant by Narcotics is Substances or drugs derived from plants, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain and can cause pain. cause dependence.

According to the results of the interview with Hakim HALIDA RAHARDHINI, SH. M. Hum., that the judge had already decided on a narcotics crime case where the perpetrator was a recidivist. Recidivists are re-doing criminal acts that were previously usually done after being sentenced and serving their sentence. The factors that cause a person to repeat a crime or recidivist include:

1. Educational factor

The low level of education can cause a shallow way of thinking, and most of the narcotics trafficking cases they are used as Narcotics couriers.

2. Socio-economic factors

Very limited opportunities to get jobs that cause a lot of unemployment, causing pressure from the economic crisis, can make a person commit a crime.

3. Environmental factor

The influence of the environment is very influential on a person's soul. The environment in this case is divided into two, namely the smallest or family environment and the community environment. The family environment is the first environment for a person and is the beginning of primary and fundamental education. It is in this environment that a person is raised and first taught to interact with other people. The role of the family is very important to teach what social norms are and the knowledge that one cannot live without other people, this is because of human nature as social beings.

The forms of criminal sanctions are explicitly stated in Article 10 of the Criminal Code. This form of criminal sanction is distinguished between the principal and additional penalties. Below are the forms of crime, both those which include the principal and additional penalties:

Principal Crimes:

Death Penalty Punishment Imprisonment Criminal Confinement Criminal Fines Additional Criminal Coverage: Revocation of Certain Rights Confiscation of Certain Goods Announcement of Judge's Decision Article 54 of the Draft Criminal Code contains the purpose of punishment, which reads as follows: Sentencing aims to:

- Preventing criminal acts by enforcing the law for the protection of society.
- Socializing convicts by conducting coaching so that they become good and useful people.
- Resolving conflicts caused by criminal acts restores balance and brings a sense of peace in society. And
- Release the guilt of the convict. Sentencing is not intended to suffer and is not allowed to degrade human dignity.

This article contains various objectives to be achieved in sentencing. In the first objective, it is clear that the view of community protection (social deventur) is drawn, while the second objective contains the intention to rehabilitate, reconnect the convicts, and integrate them into society, contrary to customary law. So here the punishment imposed is intended to resolve conflicts or conflicts and also bring a sense of peace in society.

The punishment for every narcotics abuser, especially against narcotics users, is imprisonment for himself, but if someone is a victim of abuse, the sentence imposed will of course be very different. In terms of the separation of criminal sanctions decided by the judge in the trial process between imprisonment and rehabilitation, of course the judge must pay attention to the provisions of Articles 54 and 55

Law Number 35 of 2009 concerning Narcotics where there are criteria for a person to be proven as a victim of narcotics abuse or a narcotics abuser. After the judge finds out that the defendant is a victim of narcotics abuse, the judge must look at Article 103 of Law Number 35 of 2009 concerning narcotics which states that the judge decides and orders to undergo treatment and treatment through rehabilitation.

4. CONCLUSION

The basis of the judge's consideration in the case of the criminal act of narcotics abuse group 1 for oneself. Sentencing the child "Bayu Setiawan als Arif Irawan" with imprisonment for 1 (one) year reduced as long as the child is under arrest and detention with an order that the child remains detained; Stating evidence in the form of: 1 (one) small plastic clip package containing methamphetamine with a net weight of 0.04 (zero point zero four) grams. Criminal sanctions for sellers and couriers of narcotics circulation at the Lubuk Pakam District Court, Deli Serandang Regency The forms of criminal sanctions are listed in Article 10 of the Criminal Code. This form of criminal sanction is distinguished between the principal and additional penalties. Below are the forms of crime, both those which include the principal and additional penalties Principal Crimes: Death Penalty Punishment Imprisonment Criminal Confinement Criminal Fines Additional Criminal Coverage: Revocation of Certain Rights Confiscation of Certain Goods Announcement of Judge's Decision Article 54 of the Draft Criminal Code contains

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