



Inconsistency in judges' legal considerations addressing special narcotics crimes

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ABSTRACT

The judge's legal considerations must be based on theories, jurisprudence, doctrine, trial evidence, and anything else that can clarify the case. Inconsistency in evaluating cases managed by judges in the same court for the same crime, however, can lead to inequity by imposing different sanctions. This study's objective is to examine the legal considerations judges take into account when resolving cases and issuing court decisions. This study employs a normative methodology with a comparative and statutory approach. The obtained data is then deductively processed and descriptively analyzed. The findings of this study indicate that the various judicial considerations contributed to the production of an unjust decision. This is evident from the decision number 273/Pid.Sus/2022/PN-Srg. This is due to the inconsistency of the judge's legal considerations, which leads to disparities in sentencing for narcotics-related offenses. This research shows that the regulations regarding narcotics in Indonesia are not optimal because judges as God's representatives on earth have not been able to provide the expected justice

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1. INTRODUCTION

Every nation in the world has the same objective, which is to create a prosperous, just, and prosperous existence for its citizens, and Indonesia is no exception. However, this objective is difficult to attain due to the numerous obstacles that must be overcome. Existing problems stem from economic, educational, social, cultural, and health perspectives, among others. The existence of illicit substances is a problematic aspect of public health. Illegal drugs are the opposite of medicinal drugs, which are typically used to help ailing individuals recover. This is due to the fact that the majority of narcotics are physically sound individuals whose futures are jeopardized by the drugs they ingest.

These prohibited substances are narcotics, which are categorized into three groups: Group I, Group II, and Group III. Wherein each group has its own categories, each of which has distinct consequences on the group. The actions that can be performed to avoid negative effects are narcotics trafficking and prevention. If this is not done, narcotics will be readily available, allowing those who ingest them to negatively impact social, economic, and community life physically and psychologically. Abuse of narcotics can have a negative effect on extant life, the future, education,

and a clear mind when developing every existing plan. One of the factors that can influence the development of drugs in society is free association (Bastiar, 2019).

We can find arrangements related to the prohibition of narcotics abuse in Law No. 35 of 2009 concerning Narcotics (the Narcotics Law). This regulation specifies the categories of conduct that constitute illicit conduct. The Narcotics Law specifies the sanctions that may be imposed for each and every drug-related criminal offense. The criminal code of law divides penalties into two categories: principal punishment and additional punishment. Similar to the sanctions contained in the Criminal Code, the Narcotics Law contains a variety of sanctions, beginning with the most severe, namely the death penalty, imprisonment, and a fine with a very high nominal amount.

The rule of law aims to create legal certainty in society, where every crime is a crime narcotics crime as part of an extraordinary crime will be given a decision by the judge based on the law that regulates it. So that the judge in giving consideration to the decision on narcotics crime, may not depart from the provisions stipulated in Law Number 35 of 2009 (Nasrullah, 2020). Regarding criminal imposition, the magistrate has the authority to decide each and every case. In accordance with the provisions of the law, particularly the Narcotics Law, the judge's decision may sanction anyone who commits a crime, regardless of whether it is a minor or major offense. Each judge's legal considerations determine the defendant's sentence, as the severity of the sentence must correspond with the severity of the offenses committed (Ricadonna, 2022).

Judge's legal considerations in Serang State Decisions No. 273/Pid.Sus/2022/PN.Srg and No. 316/Pid.Sus/2022/PN.Srg serve as an example of how the judge's considerations can result in varying sanctions for the defendant. With identical norms of laws and other regulations that can produce differing outcomes. Inconsistency in the judge's considerations for imposing sanctions on the defendant is caused by the imposition of criminal sanctions that differ from the weight of evidence, which is not significantly different in one court. This research has special implications for the field of criminal law to show that the existence of regulations (the Narcotics Law) does not work well, so supervision is needed, especially during examinations in district courts. The preceding description raises a concern regarding the legal considerations of judges when imposing criminal punishments on narcotics offenders.

2. RESEARCH METHOD

The research employed is normative legal research, i.e., research centered on positive legal norms and the examination of laws and regulations relating to the inconsistency of judges' legal considerations in narcotics-specific offenses. This study employs a statutory approach based on Law No. 35 of 2009 concerning Narcotics and a comparative approach based on two Serang District Court decisions, 273/Pid.Sus/2022/PN.Srg and 316/Pid.Sus/2022/PN.Srg.

The obtained results were then analyzed using a deductive pattern, which is a method of thinking that begins with developing theories that intersect with research, namely the theory of sentencing (Ristikowati & Hanim, 2021) and then presents facts that are specific to the research results on the Serang District Court's decision. The technique of analysis is descriptive, consisting of a systematic description of all the obtained facts, which are then analyzed to produce a concrete understanding, and a conclusion is derived.

3. RESULTS AND DISCUSSIONS

Legal Considerations of Serang District Court Judges

Judge's decisions with a value of justice (*ex aequo et bono*) and legal certainty contain additional benefits, one of which is determined by a judge's considerations in deciding a case (Alrosid, 2020). Therefore, every judge's contemplation of the cases he conducts must be made carefully, properly, and cautiously, as failure to do so can backfire on the judge. In imposing criminal sanctions, a judge's thoughts or opinions must consider factors that can mitigate or aggravate the defendant. Each letter will be connected together to form a word, and each word will coalesce into a sentence to form a decision that can have a profound effect on the defendant.

We can find arrangements related to judicial power in Article 24 and Article 25 CHAPTER IX of the 1945 Constitution. In addition, there is Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law). The existing norms guarantee the freedom of a judge in giving a decision

which of course avoids interference from any party. This is emphasized if we look at the explanation of Article 1 paragraph (1) of the Judicial Powers Law, namely that the judicial power is an independent state power to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the sake of the implementation of the Republic of Indonesia. This means that all the actions of a judge must be free from interference by state power or other external judicial powers (Mertokusumo, 2019).

In addition to the norms that are already available, a judge in making legal considerations is allowed to make jurisprudence and doctrine a reference for him (Irmawan & Mashdurohaturun, 2018). So that it makes a judge's view wider in seeing a case he is facing. Even Article 28 paragraph (1) of the Judicial Powers Law states that "Judges are obliged to explore, follow and understand the legal values that live in society". In other words, there is no longer any reason for a judge not to be able to create legal objectives in the form of justice, certainty and legal benefits from the decisions he makes.

Decision Consideration in No. 316/Pid.Sus/PN.Srg

The public prosecutor submitted alternative indictments, which consisted of: firstly committing the acts regulated and punishable by crime in Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Second, committing acts regulated and punishable by crime in Article 112 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics. And third, committing acts regulated and punishable by crime in Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics.

The public prosecutor also attached the results of an assessment of the defendant with the conclusion that the medical team who examined stated that the defendant had a fairly high frequency of narcotics use, which could be classified as a multidrug so that it was difficult for the defendant to express anger physically, so that when the defendant is angry, he or she will be like a child. In the meantime, the defense team stated that the defendant was a drug addict and distributor (intermediary), but that the narcotics network he obtained required further investigation. Therefore, the Cilegon City National Narcotics Board's Integrated Assessment recommended that the defendant's sentence be extended and that he receive six months of inpatient rehabilitation (Setyawan & Anton, 2019).

Because the indictment is made into an alternative, the panel of judges can choose an article that is more likely to be imposed on the defendant. Which in Decision No. 316/Pid.Sus/PN.Srg the panel of judges chose to use Article 127 paragraph (1) of the Narcotics Law. This article consists of three elements, namely, firstly every person, secondly, abuse of narcotics Category I for oneself and thirdly, the elements of owning, storing, controlling, or providing narcotics Category I that are not plants.

The use of Article 127 paragraph (1) of the Narcotics Law certainly requires elaboration in order to fulfill every element of the article. The Panel of Judges considered the elements of each person by referring to the person as a capable subject of criminal law according to the law where the defendant is a human being (natuurlijk person), physically and mentally healthy so that each person's elements are fulfilled. The second element of abuse of narcotics Category I for oneself was considered by the panel of judges based on the Narcotics-Free Certificate SKPN/27/II/2022/SIE DOKKES dated January 13, 2022 from the Cilegon Police Clinic, Banten Police, explaining that Urine An. Ardhi Fauzan bin H. Jayusman found signs of intoxication and/or use of Methamphetamine-type drugs and based on the statement of the defendant that if he succeeded in distributing narcotics he would receive 3 (three) grams as wages for his own use so that the assembly considered this second element to have been fulfilled. If examined more deeply, actually the actions of the defendant who acted as a courier should not have met this second element. And finally the third element is owning, storing, controlling, or providing narcotics Category I non-plants. The Assembly uses its considerations based on the Criminalistic Laboratory Examination Results Letter LAB Number: 0512/NFF/2022 Criminal Investigation Agency of the National Police Forensic Laboratory Center dated February 24 2022 in the name of Ardhi Fauzan bin H. Jayusman which was signed by the Head of Laboratory for Bareskrim Polri Kabid Narkobafor Drs. Sulaeman Mappasessu, concluded that: the evidence in the form of 1 (one) plastic clip pack containing 7 (seven) plastic clip packs containing white crystals with a total net weight of

1.4443 grams really contains Methamphetamine registered in group I serial number 61 of the Attachment to the Narcotics Law, so that the panel of judges believes that all elements are met. The court's decision by imposing sanctions below the minimum on the one hand is contrary to the principle of legality in criminal law (Ronaldi et al., 2019). Lack of innovation sanctions given by the judge against criminal offenders as a criminal narcotics makes imprisonment remains a potent drug (by judges), so that the principle of ultimum remedium that should be mandated by the Law on Narcotics only limited without a popular mandate fulfilled (Syachdin, n.d.).

Decision Consideration No. 273/Pid.Sus/PN.Srg

The assertions brought forth by the Public Prosecutor are alternative charges. Article 114 paragraph (1) of Law No. 35 of 2009 is the first alternative, while Article 112 paragraph (1) of Law No. 35 of 2009 is the second alternative that the council of justices will consider. The magistrate may choose between the two articles proposed by the public prosecutor due to the alternative form of indictment. In this case the panel of judges chose Article 112 paragraph (1) of Law no. 35 of 2009. Where the elements in the article are first, every person, secondly, without rights or against the law, owns, stores, controls or provides narcotics class I non-plants.

The first element, namely every person, was argued by the panel of judges by pointing to humans as legal subjects who could become subjects or perpetrators of crimes under the Narcotics Law. This was supported by the facts of the trial, which portrayed the defendant as a person who becomes or supports rights and responsibilities. By violating the provisions of the Narcotics Law, everyone is presumed to have satisfied the first element (everyone). In addition, the second element is the illegal possession, storage, control, or distribution of non-plant class I narcotics. Group I, as described in this element, consists of narcotics that can only be used for scientific research and not in therapy, and that have a high potential for dependence.

Article 8 paragraph (1) of the Narcotics Law explains that Category I is also prohibited from being used for health purposes. However, based on Article 8 paragraph (1) in conjunction with Article 41 of the Narcotics Law, it is stated that in a limited amount, group I can be used for the benefit of developing science and technology. So that the panel of judges concluded that Narcotics Category I cannot be consumed for any reason including for health or therapeutic reasons.

The panel of judges determined that the defendant was physically and mentally fit, deeming him responsible for all of his actions. During the examination, no excuses or justifications for the defendant's actions were discovered, so the panel concluded that the defendant should be found guilty. In criminal law, errors are one of the factors that determine whether or not an individual is subject to criminal sanctions.

The panel of judges further explained that the sentence imposed on the defendant was not a form of retaliation but had the aim of creating order and a sense of justice in society and educating that the wrongdoing would not be repeated by the defendant or other people. As a result, the panel expected the defendant to realize and then correct his mistake. As we know that the purpose of sentencing is not only for retaliation, there are still theories other than those already used by the panel of judges, namely the theory of retaliation. The panel of judges should be able to look at other theories such as the combined theory (werenigingstheorien), where this theory focuses on protecting society compared to retaliation (Hiariej, 2014) This theory does not only consider the actions that have been committed by the accused but also considers the future, so that the imposition of a sentence must give a sense of satisfaction not only to the judge but to the criminal himself as well as to society. Aggravating circumstances such as the defendant's actions, which are considered troubling to the community and contradict or do not support the government's program in eradicating the circulation of narcotics, are where the assembly sees cases as leaning towards aggravating matters (Diyono & Purnawan, 2020). As well as mitigating circumstances such as the defendant confessing frankly with all his actions, being polite during the trial period, and the defendant regretting his actions by not repeating these actions, this was part of the panel of judges' considerations before imposing a verdict on the defendant. With the various considerations that have existed, it appears that these considerations led to the corporal punishment of the defendant. The Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the

Republic of Indonesia, Head of the National Police of the Republic of Indonesia, and Head of the National Narcotics Agency of the Republic of Indonesia regarding the Handling of Narcotics Addicts is not visible. And victims of drug abuse into rehabilitation institutions under consideration by the panel of judges who, in the facts of the trial, have shown that the evidence obtained from the defendant has a level that is not too high, namely 0.18 grams, which does not make the defendant able to avoid the rubber article contained in the Narcotics Law.

The defendant's statement as referred to in Article 189 paragraph (1) of the Criminal Procedure Code (KUHP) explains that "the defendant's statement is information given by the defendant before the trial regarding the actions he committed or which he himself knew or experienced" in this decision stated that the defendant gave the statement "will use the methamphetamine" in fact the confession made during the trial was perfect evidence against the party who did it (Hiariej, 2012) so this could be a piece of evidence that the panel of judges should have used to become a consideration by including Article 127 The Narcotics Law or Supreme Court Circular No. 4 of 2010 concerning Placement of Abuse, Abuse Victims and Narcotics Addicts Into Medical and Social Rehabilitation Institutions. But once again, the panel of judges remained in their considerations, which led to only corporal punishment. lawmakers should provide specific guidelines on the oppression that meet the priority scale on narcotics as a guideline for judicial consideration in imposing sanctions (Asyharuddin et al., 2020).

Inconsistent Judgments of Serang Court Judges In trying a case, the judge can refer to the provisions governing the type of crime, but in determining the type of crime, the judge must look at the results of the examination at the trial court and consider what factors make the defendant accept the sanction he gives (Romdoni, 2022). The disparity of decisions has become a debate where two different defendants have different charges against the same violation. This research is a normative law, descriptive in nature (Manurung et al., 2021). Judges play a central role in the sentencing process, and because of the judicial discretion they can use it is important to understand how judges arrive at their sentencing decisions (Komalasari et al., 2021). If it is followed up in the settlement process, it must be accompanied by accurate evidence and strong reasons so that an applicable sentence can be determined. Narcotic addiction must be addressed immediately so that things do not happen that can harm many people, both adolescents and adults, and the wider community. The imposition of strict sanctions to uphold justice is indeed in the hope that the perpetrators will not repeat it again. Based on the factors and reasons stated, not all perpetrators of narcotics crimes can be sentenced to rehabilitation measures; there must be certain conditions and classifications regulated in the law or other regulations. There is an assessment and/or statement from the doctor, police, or prosecutor stating that the defendant needs rehabilitation as contained in decision No. 316/Pid.Sus/PN.Srg, which is the basis for judges to consider using Article 127 paragraph (1) of the Narcotics Law, which has been considered an article that can relieve every perpetrator of narcotics crimes. Unlike the case with decision No. 273/Pid.Sus/PN.Srg, where the judge's considerations were not found, which alluded to the assessment for the defendant, the considerations presented in the decision did not give space for the defendant to be able to breathe a little easier, as in decision No. 316/Pid.Sus/PN.Srg. the judge imposes criminal sanctions on user actors in narcotics abuse cases with the judge's consideration in convicting users, only taking into account the guidelines of the Narcotics Law and considering the charges filed by the public prosecutor (Yakin, 2020).

The inconsistency of judges' considerations at the Serang District Court has an impact on the criminal sanctions that must be served by the defendant. In decision No. 273/Pid.Sus/PN.Srg The defendant is required to serve a prison term of 6 (six) years and a fine of Rp. 1,000,000,000 (one billion Rupiah) judges tended to impose the amount of fines according to the specific minimum limit of fines, although in implementing the verdict the convict preferred to serve imprisonment as an alternative to fines that cannot be paid (Zuniarto, 2020), with the provision that if the fine is not paid, then it is replaced by imprisonment for 3 (three) months. This sanction is far different when compared to the decision No. 316/Pid.Sus/PN.Srg., which only sentenced the defendant to imprisonment for 1 (one) year and 6 (six) months. With the severity of the sentence given, the assembly should have reflected on one very important principle, namely *ultimum remedium*, where crime is the last weapon in resolving a problem (Santoso, 2020).

The difference in sanctions is even more unfair if we look at the evidence presented at trial. In Decision No. 273/Pid. Sus/PN.Srg, the evidence obtained from the defendant was 0.18 grams of methamphetamine-type narcotics. Meanwhile, in Decision No. 316/Pid. Sus/PN.Srg., the evidence obtained from the defendant weighed 1.4443 grams of methamphetamine. The panel of judges in Decision No. 273/Pid. Sus/PN.Srg should be able to pay attention to the Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Head of the National Police of the Republic of Indonesia, and Head of the National Narcotics Agency of the Republic of Indonesia. Regarding Handling Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions or the use of articles that are considered more appropriate, namely Article 127 paragraph (1) of the Narcotics Law This inconsistency raises a new problem, namely the emergence of disparities in sentencing in narcotics-specific criminal cases (Romdoni & Fitriasih, 2022), which will result in demoralization and anti-rehabilitation effects among convicts who receive greater criminal sanctions than others for one particular crime (Muladi & Arief, 2005). If you look at the ratio decidendi of the sentencing, it is clear that there is an inconsistency of the panel of judges who tried the case based on the level of his actions as a form of the several arguments presented in passing the decision (Satrya Manulung Bansage Immanuel Paparang & Dian Adriawan Daeng Tawang, 2022). Therefore the judge must consider the juridical facts, the facts of the trial and the sociological facts of the defendant. This was done so that the defendant felt that the judge handed down the criminal verdict according to the defendant's actions (Dewi & Monita, 2021). The biggest mistake is thinking that drug-abusing only leads to crime.(Ignjatović, 2020).

4. CONCLUSION

In order to satisfy the community's demands for the upholding of law and justice, the judge's decision against the defendant of the narcotics offense must be based on the impartial considerations. Nonetheless, empirically, the inconsistency of judges' considerations at the Serang District Court led to the defendant's decision No. 273/Pid. Sus/PN.Srg. those found in possession of 0.18 grams of methamphetamine-type narcotics are subject to a sanction of 6 (six) years and a fine of Rp. In contrast to Decision No. 316/Pid.Sus/PN.Srg, the sentence for possession of 1.4443 grams of methamphetamine is only 1 year and 6 months. In carrying out their deliberations, judges should be able to carry out their considerations as stated in Article 5 paragraph 1: "Judges and constitutional judges are obligated to explore, follow, and understand legal values and a sense of justice that exists in society" in order to create justice in every decision they make. This research shows that the regulations regarding narcotics in Indonesia are not optimal because judges as God's representatives on earth have not been able to provide the expected justice. This research only focuses on the judge's decision, the recommendation for further research is to do a further study from the point of view of the police and prosecutors in resolving narcotics cases.

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