



# Implementation of the principles of legal certainty and legal justice in free decisions defendant of narcotics crime (Study decision number 281/Pid. Sus/2021/Pn Rni)

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## ABSTRACT

The research aims to find out the legal basis and judge's considerations in the decision (Number 281/Pid. Sus/2021/PN RNI) and to find out whether the decision (Number 281/Pid. Sus/2021/PN RNI) has fulfilled the principles of legal certainty and legal justice. The research approach uses normative law, which is legal research by looking at library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. Then these legal materials will be processed and arranged systematically, studied, then conclusions will be drawn. related to the problem under study. Results: First, the legal facts show that the defendant was caught red-handed while taking a package containing leaves, stems and dried seeds, which is marijuana which is included in Class I narcotics at the JNE agent and the arrest was considered legal according to statutory regulations. in force, as stated in the decision of the Raba Bima District Court Number 281/Pid. Sus/2021/PN RNI, the defendant was not proven to have violated the provisions of Article 114 paragraph (1) of Law Number 35 of 2009 on Narcotics Crimes and the defendant was acquitted, after carrying out basic legal analysis and careful consideration, the defendant's mistake was proven to fulfill the elements of possession of the goods. However, in this case the judge did not carefully interpret the element of control so that the decision was considered wrong both theoretically and practically.

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## 1. INTRODUCTION

Within the scope of judicial power, there are three legal objectives that must be achieved in an integrative manner, namely justice in relation to positive legal norms (legal certainty), justice in relation to social norms (benefit), and justice in relation to moral norms (Hasaziduhu Moho, 2019). In the law enforcement process, court institutions have an important role in trying and deciding whether a person is guilty or not and determining criminal responsibility (Wahyudi, 2012). Legal certainty is an important aspect in law enforcement and the expertise, integrity and accuracy of judges is required in deciding a case that reflects the values of justice, expediency and legal certainty (Dewi & Monita, 2021)

Judges need to analyze and process data during the trial to make the right decisions. Decisions must be based on a sense of responsibility, fairness, wisdom, professionalism and

objectivity (Pardede et al., 2022). Article 5 Law no. 48 of 2009 emphasizes that legal conclusions based on the facts revealed in the trial are very important in deciding a case (Isnantiana, 2017).

The acquittal of defendants from narcotics crimes is a controversial matter in society. Narcotics crimes are considered extraordinary crimes in the Indonesian legal system (Ariyanti, 2019). The Narcotics Law regulates the heaviest criminal sanctions, including the death penalty (Debby Aulia Hakim et al., 2021). Narcotics crimes are considered criminal and dangerous for the future of the nation's next generation (Nasrullah, 2020). Therefore, judges need to be careful and careful before passing a decision in the judicial process (sinurat, 2016).

Narcotics abuse in Bima is still a serious problem. The use of narcotics can damage the future of the nation's generations and cause domestic violence. Minors are also involved in narcotics-related crimes. Narcotics are substances or drugs that can change consciousness, eliminate taste, reduce pain, and cause dependence. Law enforcers, including judges, need to pay special attention to eradicating narcotics crimes (Casanova 2021).

The narcotics crime case that the author is currently examining is a case that was acquitted by the Raba Bima District Court, West Nusa Tenggara (NTB). This case began on Tuesday, May 25 2021, at around 03.00 WITA, Ramli was caught red-handed while taking a package from a JNE agent's house containing samples of dried leaves, stems and seeds.

The results of laboratory tests concluded that the samples of dried leaves, stems and seeds were marijuana and included Narcotics Class I. The defendant carried out actions without permission from the Minister of Health or an Authorized Official regarding offers for sale, selling, buying, receiving, being an intermediary in buying and selling, exchange, or hand over Class I Narcotics. However, the Raba Bima District Court with Decision Number 281/Pid. Sus/2021/PN RNI decided that the defendant was not proven to have committed a criminal act as stated in the Public Prosecutor's indictment. The judge's decision is considered to harm Indonesia's sense of legal justice. Judges in deciding a case, especially at the District Court level, must be more careful in paying attention to evidence such as the statements of witnesses, instructions and experts, whether the statements of the witnesses agree, as well as considering the information and paying close attention to the public prosecutor's accusations, such as the following elements. elements of the articles charged by the public prosecutor against the defendant, so that the decision handed down to the defendant is in accordance with what he did and efforts to eradicate perpetrators of narcotics crimes can be maximized more specifically in the Bima Regency/City area

## **2. RESEARCH METHOD**

This type of legal research is normative legal research which is legal research by looking at library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials (Rachmawati, 2017). Then these legal materials will be processed and arranged systematically, studied, then conclusions related to the problem being studied will be drawn. So research activities here are relatively the same as the work carried out by a judge when faced with a case that must be resolved or a decision made (Sugiyono, 2016).

The data management method is an inductive method, a combination of the amount of court decision data and then analyzed using statutory regulations related to the theory used with the problem being studied (Fikarlia, 2023). In normative legal research the real intention is to systematize written legal materials. This systematization includes the classification of written legal materials to facilitate analysis (Arikunto, 2010).

## **3. RESULTS AND DISCUSSIONS**

Law Number 35 of 2009 regulates Narcotics Crimes and each article in it has elements that must be fulfilled to ensnare someone suspected of committing a narcotics crime. If the elements are not met, a person must be released based on the provisions of the law.(Kusumawarni, 2022)This relates to the acquittal given by the judge to the defendant Ramli in case Number 281/Pid. Sus/2021/PN RNI.

Before discussing the problem being researched further, we need to understand that there are three stages that a judge must go through to reach a decision, the first stage is constituting, the second stage is qualification and the third stage is constitution.

The first stage is to stabilize, before the judge makes a decision on the case, the judge should investigate the event, this is to study the origins of the event, whether the event really happened or was just a fabrication. For this reason, the author will describe the beginning of the events that occurred in this case as follows:

Case Number 281/Pid. Sus/2021/PN RNI started on Monday, 24 May 2021. Witness Thaufarrahman from the Bima City Police Narcotics Unit Police received information that the defendant was the target of the operation and would take a package suspected of containing narcotics at the house of Abdul Rasid, a JNE agent in Langgudu District, Bima Regency. A team, including witnesses Khozin Haryanto, Muhamad Ikbal, Virman Bima, and Muhammad Alfin Khairu, was sent to confirm this information. After arriving in Langgudu District, the team was divided into two parts. Thaufarrahman and Muhamad Ikbal supervised the JNE house, while Khozin Haryanto, Virman Bima, and Muhammad Alfin Khairu supervised from separate locations.

On Tuesday, May 25 2021 at around 02.30 WITA, Thaufarrahman and Muhamad Ikbal came to the house of Abdul Rasid, a JNE agent. They explained the purpose of their visit was to get information about the person who would take the package which allegedly contained narcotics. Abdul Rasid invited them to wait in his room. At around 03.00 WITA, they heard the sound of a motorbike stopping in front of Abdul Rasid's house. Someone knocked on the door and Abdul Rasid opened it. The defendant asked for the item in a high tone, while Abdul Rasid asked what the item was. The defendant threatened Abdul Rasid and dragged him out of the house to the front alley.

Brother Fanta, a friend of the defendant, entered Abdul Rasid's house. Fanta was secured by Thaufarrahman and Muhamad Ikbal, but managed to escape after struggling and screaming. Thaufarrahman came out to help secure the defendant, and the situation became busy with the presence of local people. The Village Head Rupe, witness Adam, and police officers came to Abdul Rasid's house at around 06:30 WITA to look for a package in Najma's name which the defendant wanted to take. After Thaufarrahman took the package and showed it to the defendant, the package was opened by another police officer. In the package were found dried marijuana leaves, stems and seeds. Laboratory test results concluded that the sample was marijuana, which is included in Class I narcotics.

The second stage carried out by the judge is qualification, the qualification stage is the stage where the judge determines the legal arguments that are related to the incident, in this case the judge has carried out the qualification and concluded that the incident is not a legal event so that there is no legal argument for sentencing him. Defendant.

The constitutional stage is the final stage where the judge draws a conclusion and decides the case from the results of the constitution and qualifications. In this case the judge handed down a verdict of acquittal to the defendant because the articles charged against the defendant were not fulfilled as stated in the public prosecutor's indictment and were deemed inconsistent with the events that occurred.

Next, the author will examine the legal facts along with the judge's legal considerations in case Number 281/Pid. Sus/2021/PN RNI includes: The public prosecutor charged the defendant with a primary indictment consisting of three charges. The first charge is Article 114 paragraph (1) of Law Number 35 of 2009 in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Crimes. The second charge is Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Crimes. The third charge is Article 127 paragraph (1) letter a) Law Number 35 of 2009 concerning Narcotics Crimes.

Number 281/Pid. Sus/2021/PN RNI A judge is obliged to consider factors related to the defendant, such as whether the defendant actually committed the act accused of him, whether the defendant was aware that his act violated the law and was carried out with fear and guilt, and whether the defendant at the time committing these acts is considered capable of being responsible. Therefore, judges must make fair and wise decisions by considering the legal implications and possible impacts.

A judge must have clear and precise considerations in making decisions. Apart from being based on the articles that apply to the defendant's case, the judge's considerations are also based on the judge's own beliefs and conscience. Therefore, one judge may have different considerations

in handing down a decision. There are two categories that form the basis of the judge's consideration in handing down an acquittal decision, namely juridical and non-juridical considerations.

### **Juridical Considerations**

Juridical considerations are considerations made by a judge based on the legal facts of a case, and must be explained in the judge's decision in accordance with the provisions of the law. These considerations include: a) Public Prosecutor's Demands, the Public Prosecutor is a prosecutor who has the authority based on law to carry out prosecutions and implement court decisions and orders. (Alam, Husen, and Ahmad 2020) In narcotics crime cases, the Public Prosecutor is tasked with representing the State in prosecuting the defendant. In case Number 281/Pid. Sus/2021/PN RNI, the demands of the Public Prosecutor are that the defendant Ramli has been legally and convincingly proven guilty of committing a crime of attempted crime without rights or against the law in the case of abuse of class 1 narcotics in the form of plants, in accordance with the provisions and criminal threats regulated in Article 114 paragraph (1) of Law Number 35 of 2009 in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Crimes and the public prosecutor sentenced the defendant to 8 (eight) years with the provisions for the length of time the defendant was detained and ordered the defendant remains in custody and is fined Rp. 1,000,000,000. (one billion rupiah) subsaider 6 (six months in prison). b) Witness Statement, witness statements are regulated as evidence in Article 184 paragraph (1) letter a of the Criminal Procedure Code. A witness statement is information about a criminal incident that the witness saw and experienced directly, and must be presented in court by taking an oath. In case Number 281/Pid. Sus/2021/PN RNI, there were five witnesses from the police who gave the same statement regarding the incident, and this was confirmed by one witness who was a JNE agent. c) Defendant's statement, as for the defendant's statement in case Number 281/Pid. Sus/2021/PN RNI includes: "That the defendant was not at that location to pick up the package but to look for a truck to rent to load corn. That the defendant did not come to Abdul Rasid's house. That the defendant was arrested in the alley in front of Abdul Rasid's house. That the defendant did not know about the package containing the narcotics. "That the defendant does not know the person named Najma referred to in the package."

The defendant's statement is regulated in article 184 paragraph (1) letter e of the Criminal Procedure Code as part five. In terms of comparison with the defendant's confession, the defendant's statement does not have to be identical or merely in the form of a confession, but rather all of the defendant's statements should be heard. The defendant's statement can be in the form of a denial, partial confession, or admission regarding certain actions or circumstances. The defendant's statement does not need to be the same as a confession because a confession as evidence has requirements, namely admitting to being the perpetrator of the crime charged and admitting that he is guilty.

Furthermore, the defendant's statement is limitedly regulated by article 189 of the Criminal Procedure Code, which reads: a) The defendant's statement is what the defendant stated in court about the actions he committed or knew about or experienced himself. b) The defendant's statement given outside the court can be used to help find evidence at trial, as long as the statement is supported by valid evidence regarding the matter with which he is charged. c) The defendant's statement can only be used against himself. (Rozi, 2019)

To determine the extent to which the defendant's statement can be considered as valid evidence according to the law, several principles are needed as a basis to stand on, among others, the first is that the statement is included in the trial process in court, so that the defendant's statement can be used as valid evidence, This information must be stated at the court hearing, whether the statement is in the form of an explanation "spoken by himself" by the defendant or a statement in the form of an "explanation" or "answer" of the defendant to a question posed to him by the chairman of the trial, member judge, public prosecutor or legal advisor. (Amelia Erwanda & Soponyono, 2020) What must be assessed by the panel of judges is not only statements containing mere "confession statements", but also explanations of the "denials" stated by them.

### Non-Judicial Considerations

As for aggravating and mitigating factors, the judge considers non-judicial aggravating and mitigating factors, including: a) The aggravating circumstance is that the defendant's actions do not support the government's program to eradicate narcotics crimes, b) Mitigating circumstances are that the defendant has never been convicted in court, the defendant behaved politely at trial, realized his mistake and the defendant has family responsibilities and is relatively young so he can correct his mistake. (Firsta et al., 2023)

In case Number 281/Pid. Sus/2021/PN RNI, the judge handed down a verdict of acquittal against the defendant. However, this decision is considered to have damaged the objectives of law in Indonesia, because the evidence presented at the trial has fulfilled the requirements stipulated in Article 184 paragraph (1) of the Criminal Procedure Code. According to negative evidence theory, it is important for judges to have confidence in deciding a case using at least two valid pieces of evidence in accordance with the law.

The judge decided to acquit the defendant by considering two points in case Number 281/Pid. Sus/2021/PN RNI. The first point is that everyone can be held responsible for criminal acts, but the legal subjects who can be held responsible must be physically and mentally healthy. The second point is the element of no right to violate the law in Article 114 of Law Number 35 of 2009 concerning Narcotics Crimes. This element refers to actions that are not in accordance with the law or violate applicable law. The defendant's actions are considered to be contrary to the provisions of Law Number 35 of 2009 concerning Narcotics.

The judge considered the first charge which violated Article 114 of Law Number 35 of 2009 concerning Narcotics Crimes in conjunction with Article 132 paragraph 1 of Law Number 35 of 2009 concerning Narcotics Crimes. The elements of the indictment include the actions of any person, without any unlawful right, offering for sale, buying, accepting to be an intermediary for buying and selling, exchanging or handing over class 1 narcotics, as well as attempts or criminal conspiracy to commit criminal acts of narcotics and narcotics precursors. The panel of judges concluded that the elements of each person were legally fulfilled according to the law in the primary and subsidiary charges. However, the element of no right against the law is not legally fulfilled in the primary or subsidiary charges.

The panel of judges considered the elements of the second primary charge as regulated in Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Crimes, namely the element of each person and the element of attempt or criminal conspiracy. The panel of judges concluded that each person's elements had been legally fulfilled according to the law. The elements of attempted or criminal conspiracy are alternative, and all sub-elements or parts of these elements do not have to be proven. The panel of judges also considered that the act of keeping non-plant class 1 marijuana/narcotics plants must be carried out without rights or in conflict with other people's rights or without any legal rights at all.

In connection with the judge's legal considerations in deciding the above case as follows: a) Declare that Ramli has not been legally and convincingly proven to have committed a criminal act as stated in the public prosecutor's indictment; b) Acquit the defendant from all charges from the public prosecutor; c) Restoring the defendant's rights in terms of capacity and status and dignity; d) Release the defendant from detention immediately after the verdict is pronounced;

Determine evidence in the form: One package of leaves, stems and seeds is suspected to be a type of marijuana narcotic weighing 914 grams, one sheet of clear plastic, one sheet of purple plastic, one sheet of white cloth, one sheet of purple plastic has paper attached to it that says TTH Najma, S, Kep, Jl, Tente-Karumbu crossing, Langgudu Health Center, Karumbu Village, Langgudu District, Bima Regency-NTB, Postal code 84180, HP number. 082339537494, Description: Clothing, Delivery: Mrs. Diana, No, MOBILE PHONE. 0822 1378 8863, one piece of clear plastic bag for wrapping JNE Express packages, one Samsung J5 mobile phone in gold color with Sim Card number 0853 3921 8191, one gray hat

According to the author, fulfilling the elements of Article 114 paragraph (1) of the Narcotics Law in this case is not appropriate. The defendant was proven to have received marijuana in packaged form, so he could be considered to possess and control marijuana in violation of Articles 112 paragraph (1) and 114 paragraph (1) of the Narcotics Law. The defendant was also caught

red-handed taking marijuana, so he could be considered to have violated Article 114 paragraph (1) of the Narcotics Law as a "buyer". The defendant also tested positive for using narcotics, so he could be accused of violating Article 127 paragraph (1) letter a of the Narcotics Law with rehabilitation measures as an alternative to imprisonment. The author also criticized that the judge did not consider the testimony of witnesses in this case as regulated in Article 184 of the Criminal Procedure Code. The judge can only use valid evidence that has been determined by law to prove the defendant's guilt

Referring to the theory of negative evidence (negative wettelijk bewijstheorie) as seen in Article 183 of the Criminal Procedure Code which states, "A judge may not sentence a person to a crime unless, with at least two valid pieces of evidence, he is convinced that a criminal act is true. occurred and that the defendant was guilty of committing it." According to Wirjono Projodikoro as quoted by Andi Hamzah, there are two benefits to this negative proof. First, it is appropriate for a judge to sentence someone with conviction. Second, it would be useful if there were rules that bind judges in formulating their beliefs, so that there are certain standards that judges must adhere to when conducting justice (Nugroho, 2017).

Binding provisions are prohibitions for judges to do anything related to evidence. Article 183 of the Criminal Procedure Code stipulates that a judge may only impose a crime if he has at least two valid pieces of evidence and the belief that a criminal act has occurred and the defendant is guilty. In this case, the evidence presented at trial met the minimum requirements as regulated in Article 184 of the Criminal Procedure Code.

In case Number 281/Pid. Sus/2021/PN RNI, it is necessary to study the evidence used to prove the defendant's guilt. The judge may only declare the defendant not guilty if the evidentiary requirements according to the Criminal Procedure Code are met and the judge is confident in the case. The defendant can be sentenced to acquittal if he is not legally and convincingly proven to have committed the act charged, but can be sentenced if he is proven to have committed a narcotics crime. In negative proof, a minimum of two valid pieces of evidence are required in accordance with Article 183 jo. Article 184 of the Criminal Procedure Code. The judge must consider all the evidence presented at trial to reach confidence in handing down a verdict.

Evidence in narcotics crime cases is very important in the criminal procedural legal process. Evidence contains rules and guidelines recognized by law to prove the defendant's guilt and regulates the use of evidence permitted by law. Proof is carried out to show existing evidence, take action as the truth, carry out, demonstrate, witness and convince. Judges should not ignore the evidentiary process and testimonial statements as evidence in making decisions (Dio Lavarino & Wiyli Yustanti, 2016).

According to Article 183 of the Criminal Procedure Code, a judge can only acquit a defendant if there are less than two valid pieces of evidence. This is necessary so that the judge has confidence that the criminal act actually occurred or was not committed by the person. then an acquittal is given based on Article 191 paragraph (1) of the Criminal Procedure Code if the court is of the opinion that the defendant's guilt for the act charged has not been legally and convincingly proven. The judge will give a verdict of acquittal if there are the following: a) Does not fulfill the principle of negative evidence, namely that the evidence obtained at trial is not sufficient to prove the defendant's guilt and is not believed by the judge, b) Does not meet the principle of minimum threshold of proof. The acquittal decision is based on the judge's assessment that the guilt charged has not been legally and convincingly proven or the evidence does not meet the minimum threshold of proof. Even though formally the defendant's guilt can be considered sufficiently proven, the value of this sufficient evidence is paralyzed if it is not supported by the judge's conviction (Akbar, 2020).

If we analyze decision Number 281/Pid. Sus/2021/PN RNI with the theory of negative evidence, it can be concluded that the acquittal in this case cannot be justified. This is because the evidence in this case has used more than two pieces of evidence that have been legally determined in the Criminal Procedure Code. According to this theory, a judge in making a decision must consider the relationship between the evidence and the event as the basis for a judge's belief, and a judge may not make a decision without a minimum of two pieces of evidence as specified in the law (Mas & Renggong, 2021).

Furthermore, according to negative evidence theory, a cause and effect relationship is needed between evidence and beliefs. This negative evidence theory clearly regulates the evidence that can be used in accordance with the law, as well as how to use it (Wibowo & Widiyasmoko, 2021). Apart from that, it is also important to have confidence that the criminal incident actually occurred and the defendant is guilty. The above shows that judges must be more careful in understanding and assessing the defendant's guilt using the evidence presented at trial. So that the decision handed down by the judge is truly convincing in deciding a case (Setyawan et al., 2019).

Based on Decision Number 281/Pid. Sus/2021/PN RNI above, if the legal facts are examined objectively. In the author's opinion, what stands out in these legal considerations is the judge's subjective belief without testing its validity and linking it to valid evidence or evidence presented before the trial. This means that in deciding the defendant's innocence, the panel of judges must provide legal arguments and considerations relating to evidence that is valid according to law. So that the defendant's guilt has been legally proven according to the methods and evidence stated in the law (Fremmy et al., 2022).

In this case, it is not uncommon or often, in legal considerations, that the panel of judges formulates legal arguments that are not based on strong legal arguments, namely handing down a decision "the defendant has not been legally and convincingly proven guilty of committing a criminal act". Regarding the defendant's actions, it is as if the judge's belief was simply drawn without consideration of valid evidence which has been determined in the Criminal Procedure Code, as in the negative theory adopted by Indonesian criminal law, so the judge's belief in deciding the case must be based on the provisions of the applicable law (Frengky Manurung, 2020).

#### 4. CONCLUSION

Before the judge issues an acquittal decision against the defendant, evidence must be carried out in court based on the provisions contained in the Criminal Procedure Code. Proof in this case is the burden of the Public Prosecutor through his indictment. With evidence, this is one of the reasons the judge believes what kind of decision should be handed down to the defendant. To hand down an acquittal in a narcotics crime case, the judge is obliged to make clear considerations and a clear legal basis.

The legal basis for the decision to acquit the defendant in the narcotics crime case Number 281/Pid.Sus/2021/PN RN is two things. First, the judge did not carefully interpret the elements of Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Crimes. The judge was of the opinion that the defendant was not included in the category of perpetrators who offered to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or handing over Narcotics. Apart from that, the defendant did not control the package containing marijuana, which is a class 1 narcotic. Second, based on witness testimony, the judge considered that the defendant did not take the package but instead looked for a truck to transport the corn. The panel of judges also did not consider the testimony of witnesses presented by the public prosecutor. Before handing down a decision, the judge is obliged to determine a theory that is related to the problem and this theory will be used as a reference in order to obtain a decision that reflects justice and legal certainty. This has implications for public trust in law enforcement, especially at the court level.

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