

# CRIMINAL SENTENCE ON SPECIAL MINIMUM THREATS IN NARCOTICS CRIME AT THE PARIAMAN DISTRICT COURT Study Case of Judge's Decision Number 114/Pid.Sus/2020/PN Pmn

<sup>1</sup>Adek Maiyuza, <sup>2</sup>Prof. Dr. Elwi Danil, <sup>3</sup>Dr. Fadillah Sabri  
<sup>1</sup>Master Of Law Student, <sup>2,3</sup>Master Of Law Lecture,  
Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia  
Email – <sup>1</sup>maiyuza.adek@gmail.com

**Abstract:** Narcotics crime in society heading to increase by quantitative and qualitative and so then on Act No 35 year 2009 which is regulate on narcotics crime had been set the minimum sentences that have purposes to give the deterrents effect. In point of fact, Panels of Judges in Pariamans District Court had been sentences the defendant by verdict number 114/pid.sus/2020/PN lower than it should be. Defendant has been proven against article number 112 verse 1 of Narcotics crime Act, and sentences for 2 years. Meanwhile the amount of sentences on the Articles it should be 4 years.

**Key Words:** Judge's Decision, Criminal Sentence on Special Minimum Threats, Narcotics.

## 1. INTRODUCTION:

The imposition of a criminal under the special minimum threat regulated in Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which is violated by the defendant, of course creates legal uncertainty and disturbs the sense of justice in society. Regarding legal uncertainty, for the Public Prosecutor this is a reason to take legal action at each level of the judiciary, thereby interfering with the effectiveness and efficiency of handling criminal cases, in accordance with the principle of fast, easy and low-cost justice as regulated in Article 2 paragraph (4) of the Law. Number 48 of 2009 concerning Judicial Power. On the other hand, for the defendant, it will result in a delay in legal certainty regarding the crime he will receive or undergo. As for the general public, the decision creates a sense of public distrust of the existing law. Whereas Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia has stipulated that: "Judicial power is an independent power to administer justice in order to uphold law and justice". Judges should not be able to impose crimes that are contrary to the existing laws and regulations. It cannot be justified based on the principle of legality which contains elements of legal certainty, which means "there is no crime without a law", it has firmly stated that every criminal sanction must be determined by law. Thus, a judge may not impose a crime other than what has been determined in the provisions of the law. The attitude of the judge in the judicial process will greatly determine the objectivity in deciding a case.

## 2. THEORITICAL FRAMEWORK:

- Theory of Justice  
Justice theory is a theory that examines and analyzes the impartiality, truth or arbitrariness of institutions or individuals against society or other individuals.[1]
- Legal Certainty  
According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented.[2]
- The Theory of Punishment  
Adherents of the theory of absolute punishment state, every crime must be followed by a criminal, it can't be done without bargaining.

## 3. LITERATURE REVIEW:

The criminal system in force in Indonesia focuses on taking action against perpetrators of crime and has not paid attention to the recovery of losses and suffering for victims who have disappeared as a result of crimes.[3]

In making a decision against the defendant the judge did not only look at the statements of the witnesses but also the legal facts that were revealed at the trial.

An act can only be punished if there are rules governing it before the act is committed. Regulations on narcotics crimes have been regulated in Law Number 35 of 2009 concerning Narcotics. The enactment of Law Number 35 of 2009 concerning Narcotics is the application of the principle of *lex specialis derogat legi generalis* (specific legal rules will override general legal rules).

#### 4. METHOD:

The method used in this study is a normative legal approach, which is an approach that focuses on reviewing and researching legal material with reference to legal norms contained in laws and regulations, court decisions and legal norms that exist in society.[4]

#### 5. DISCUSSION:

The threat of drug crime is no longer seen as an ordinary crime, but has been categorized as an *extraordinary crime* because of the seriousness and extent of the threat posed. In the international legal regime this crime is classified as *the most serious crime*. Legal issues in the enforcement of criminal law against narcotics crimes, especially in the jurisdiction of the Pariaman District Court, are the non-synchronization between the normative provisions stipulated in Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and the practice of its application to concrete events in the form of Narcotics crime case in Pariaman District Court. So it is necessary to analyze and critically study in an effort to gain an understanding of the imposition of imprisonment under the specific minimum threat in Narcotics crime at the Pariaman District Court.

#### 6. ANALYSIS:

##### A. Judge's Considerations Imposing Imprisonment Under the Specific Minimum Criminal Threat in Narcotics Crime In Decision Number 114/Pid.Sus/2020/Pn Pmn At Pariaman District Court

When the judge makes a decision that is closer to the principle of legal certainty, then automatically, the judge will move away from the point of justice. On the other hand, if the judge makes a decision closer to justice, the judge will automatically stay away from the point of legal certainty. Herein lies the limits of judges' freedom, where judges can only move between these 2 (two) points. With a reasonable consideration, a judge will determine when he is near the point of legal certainty, and when to be near the point of justice. So it is not entirely true that the judge in examining and deciding a case is free and without limits.[5] In the decision on behalf of the Defendant Ari Junaidi Called Ari Alias Erik, the judge is more likely to make decisions that lead to the theory of justice and move away from the theory of legal certainty. This can be seen from the judge's consideration which stated that the Defendant was proven to be in control of Narcotics Category I, not plants but only for his own use and for that the Assembly sentenced the Defendant under the minimum threat of Article 112 paragraph (1) of Law Number 35 of 2009 concerning narcotics.

##### B. Legal Consequences of Judge's Decision Number 114/Pid.Sus/2020/Pn Pmn At the Pariaman District Court, Which Sentenced Prison Under the Specific Minimum Penalty Threat

The legal consequence of the judge's decision Number 114/Pid.Sus/2020/PN Pmn at the Pariaman District Court, which imposed a prison sentence under the specific minimum penalty when viewed from the theory of legal certainty, was the delay in legal certainty for the defendant because the Public Prosecutor made an appeal. and appeal. The appeal and cassation efforts made by the Public Prosecutor resulted in Judge's Decision Number 114/Pid.Sus/2020/PN PMN at the Pariaman District Court being raw again and not having execution power.

#### 7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The conception of criminalization of narcotics crimes in Indonesia in Law Number 35 of 2009 concerning Narcotics as well as in the Draft Criminal Code, if viewed from the theory of punishment, it can be seen that it is more inclined to the theory of combined punishment, namely the imposition of criminal sanctions held to avenge the actions of the perpetrators, it is also intended that the perpetrators can be repaired so that it can return to society
- The judge's consideration of imposing a prison sentence under the threat of a special minimum crime in narcotics crime in the decision Number 114/Pid.Sus/2020/PN PMN at the Pariaman District Court, has been in accordance with the theory of justice. This can be seen from the judge's consideration which stated that the Defendant was proven to be in control of Narcotics Category I, not plants but only for his own use and for that

the Assembly sentenced the Defendant under the minimum threat of Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

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