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Sentencing in Narcotics Criminal Offenses from the Perspective of Certainty and Justice

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Abstract. *This study investigates the sentencing practices in narcotics criminal cases, focusing on whether they align with the principles of legal certainty and justice. The central aim is to examine whether judges' rulings in such cases uphold the legal norms established in existing legislation, particularly in relation to mandatory minimum sentences and the cumulative imposition of penalties, such as imprisonment and fines. The research employs a normative or doctrinal legal method, analyzing legal statutes, court decisions, and legal commentaries related to narcotics offenses. By scrutinizing the sentencing framework, the study seeks to understand how legal norms influence judicial discretion and the extent to which sentencing practices maintain consistency with established laws. A key focus is on the potential discrepancies between in abstracto (legislation) and in concreto (court rulings), particularly when judges deviate from the minimum sentencing guidelines. This research is significant as it explores the balance between strict legal enforcement and the need for justice that considers the circumstances of each case. The findings are expected to contribute to ongoing discussions on legal reform, helping to develop a sentencing system that is both fair and consistent, ensuring that legal certainty and justice are upheld in narcotics-related offenses.*

Keywords: *Certainty; Justice; Narcotics.*

1. INTRODUCTION

National development in Indonesia aims to realize a fully developed Indonesian person and a just, prosperous, orderly, and peaceful Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. To achieve a prosperous Indonesian society, continuous improvement in the fields of medicine and healthcare, including the availability of narcotics as medication, is necessary, in addition to scientific development.[1]

Narcotics essentially have therapeutic benefits in the fields of medicine, health, and treatment, and are useful for research and development in the field of pharmacy or pharmacology. However, their misuse or use outside of medical supervision poses an international threat, particularly to the younger generation, who are the backbone of

[1] Irwan Jasa Tarigan, *Peran Badan Narkotika Nasional Dengan Organisasi Sosial Kemasyarakatan Dalam Penanganan Pelaku Penyalahgunaan Narkotika* (Deepublish, 2017).

national development. [2]

Increased control and supervision are necessary to prevent and eradicate narcotics abuse and trafficking because narcotics crimes are generally not committed by individuals alone but are carried out collaboratively, often by systematically organized and highly secretive syndicates. Advances in science and technology, particularly information technology, have led to an increase in crime across various fields, both in terms of intensity and sophistication. This also affects global security and hinders national progress in social, economic, and cultural aspects. Given that crime evolves with societal changes, it is not surprising to hear the saying "crime is old in age but young in news," meaning that crime has always been a topic of discussion, from simple crimes to complex ones. [3]

With the advancement of time, new forms of crime are emerging, demonstrating that crime is always dynamic. Narcotics crime is no exception to this trend. Transnational narcotics crime uses advanced modus operandi and technology, including securing the proceeds of narcotics offenses. The growing sophistication of narcotics crime poses a serious threat to human life. To improve control and supervision and to enhance efforts to prevent and eradicate narcotics abuse and trafficking, legislative regulation is required. [4]

Narcotics crimes are regulated under Law No. 35 of 2009 on Narcotics. According to Article 1, Paragraph 1 of the Narcotics Law, "Narcotics are substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, that can cause a decrease or change in consciousness, loss of sensation, reduction or elimination of pain, and may lead to dependence, categorized into classes as listed in this Law."

Law enforcement against narcotics crimes has been actively carried out by law enforcement officials, and many judicial decisions have been made with the expectation that law enforcement will be an effective deterrent to the spread of illegal narcotics trade. However, in reality, the trafficking and distribution of narcotics have become increasingly intensive [5]. This indicates that narcotics crimes require serious handling because narcotics can damage the nation's and country's future. Yet, many narcotics cases decided by the courts do not comply with the legal provisions.

One such decision is Case No. 889/Pid.Sus/2020/PN Mks. In this decision, the defendant was charged under Article 112, Paragraph (1) of the Narcotics Law, which states that "any person who unlawfully possesses, stores, controls, or provides narcotics of Group I non-plants shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years, and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah) and at most IDR 8,000,000,000.00 (eight billion rupiah)." According to Article 112, Paragraph (1) of the Narcotics Law, the minimum prison sentence is 4 (four) years and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah). This means that anyone violating Article 112, Paragraph (1) of the Narcotics Law should be sentenced to at least 4 (four) years in prison and a fine of at least IDR 800,000,000.00 (eight hundred million rupiah).

In reality, in Case No. 889/Pid.Sus/2020/PN Mks, the defendant was sentenced to only

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[2] Rio Wahyu Anggoro, 'Tindak Pidana Tanpa Hak Atau Melawan Hukum Dengan Jual Beli Narkotika Golongan I Bukan Tanaman', *Syntax Idea*, 6.2 (2024), pp. 981–90, doi:10.46799/syntax-idea.v6i2.2902.

[3] Tarigan.

[4] Tarigan.

[5] Suci Ramadani and others, 'Criminal Law Politics on Regulation of Criminal Actions in Indonesia', *Linguistics and Culture Review*, 5.S1 (2021), pp. 1373–80, doi:10.21744/lingcure.v5nS1.1651.

3 (three) years in prison, meaning the judge imposed a prison sentence below the minimum threat and did not impose a fine. The prison sentence and fine in Article 112, Paragraph (1) of the Narcotics Law are cumulative in nature. This is essentially an unacceptable decision, as the criminal sanctions imposed are singular, whereas they are designed to be cumulatively absolute by the legislature. Therefore, the author believes this issue needs to be examined from the perspectives of certainty and justice. Based on this problem background, the author formulates the issue as follows: How is sentencing in narcotics crimes viewed from the perspectives of certainty and justice?

Literature Riview

1. Narcotic Crimes

In the Indonesian Penal Code (KUHP), criminal acts are referred to as "strafbaar feit," and in criminal law literature, the term "delik" is often used. Lawmakers use terms like "criminal events" or "criminal acts" or "criminal offenses" in legal statutes. "Criminal act" is a term that carries a fundamental meaning in legal science, designed to provide specific characteristics to criminal legal events. A criminal act has an abstract meaning compared to concrete events in criminal law, and thus must be scientifically defined to distinguish it from everyday terms used in society. [6]

The term "act" is commonly used in legislation, though its appropriateness can still be debated. "Act" signifies human behavior in a positive sense (active), and does not include passive or negative behavior. However, the term "feit" actually includes both active and passive acts. [7] [8]

Active acts involve actions requiring movement or activity from the body or parts of the body. Passive acts involve failing to perform a physical action, thereby neglecting legal duties, such as failing to assist (Article 53 KUHP) or allowing (Article 304 KUHP). [9]

Foreign criminal law experts use various terms for criminal acts: [10]

a. "Strafbaar feit" means criminal event.
b. "Strafbare handeling," used by German criminal law scholars, translates to criminal act.
c. "Criminal act" translates to a criminal offense.

The Dutch term "Strafbaar feit" consists of three words: [11]

a. "Straf" means punishment and law.
b. "Baar" means able or permissible.
c. "Feit" means act, event, violation, and deed.

Thus, "Strafbaar feit" refers to a punishable event or act. In foreign languages, the term "delict" means an act for which the perpetrator can be punished. "Strafbaar feit" is a Dutch term that has various translations in Indonesian, such as "criminal act," "criminal event," "criminal offense," "punishable act," etc [12]. Moeljatno states that a

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[6] Amir Ilyas, *Asas-Asas Hukum Pidana: Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan* (Rangkang Education Yogyakarta & PuKAP-Indonesia, 2005).

[7] Adami Chazawi, 'Pelajaran Hukum Pidana 3', 2011.

[8] Jason Gainous, Jason P Abbott, and Kevin M Wagner, 'Active vs. Passive Social Media Engagement with Critical Information: Protest Behavior in Two Asian Countries', *The International Journal of Press/Politics*, 26.2 (2021), pp. 464–83, doi:10.1177/1940161220963606.

[9] Chazawi.

[10] Amir Ilyas.

[11] Amir Ilyas.

[12] Amir Ilyas.

criminal act is one prohibited by law, accompanied by a penalty for anyone who violates the prohibition. It can also be described as an act prohibited by law and punishable by a penalty, with the prohibition aimed at the act and the penalty aimed at the individual who committed the act. The prohibition and penalty are closely related, as the event and the person responsible for it are closely linked. [13]

Simons explains that "strafbaar feit" refers to conduct (handeling) threatened with punishment, unlawful, related to culpability, and performed by a responsible person. Van Hamel defines "strafbaar feit" as "human behavior (menselijke gedraging) described in law, unlawful, punishable (strafwaarding), and done with fault." From these definitions, it is clear that: [14]

a. "Feit" in "strafbaar feit" means conduct or behavior.
b. The concept of "strafbaar feit" is linked with the fault of the person engaging in the conduct.

The term "narcotics" is no longer foreign to society, given the extensive media coverage on its use and its impact across various age groups [15]. Etymologically, "narcotics" comes from the Greek word "narke," meaning to numb or become insensible. [16]

AR. Sujono and Bony Daniel state that "narcotics" originates from the Greek "narkoun," meaning to paralyze or numb. Taufik describes narcotics as substances that cause specific effects on users by being introduced into the body. [17]

According to Article 1, paragraph 1 of the Narcotics Law, narcotics are substances or drugs derived from plants or not, whether synthetic or semi-synthetic, that can cause decreased or altered consciousness, loss of sensation, reduction or elimination of pain, and can lead to dependence, categorized into groups as outlined in this law.

2. Penalization

Penalization can be defined as the stage of determining and administering sanctions in criminal law. The term "penal" generally refers to law, while "penalization" refers to punishment [18]. The term "punishment" comes from the word "straf," and "punished" comes from "wordt gestraf." [19]

Punishment as an action against a criminal is justified not only because it has positive consequences for the convict, the victim, and society but also because it is intended to prevent future crimes. This is known as consequentialist theory. The purpose of punishment is not merely to address past wrongs but to deter the perpetrator and others from committing similar crimes. [20]

Penalization is not intended as a form of revenge but as a means of rehabilitation for the offender and as a preventive measure against similar crimes. Penalization can be

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[13] Suyanto Suyanto, 'Pengantar Hukum Pidana', *Buku Pengantar Hukum Pidana* (Deepublish, 2018).

[14] Suyanto.

[15] R A De Rozarie and Jawa Timur–Negara Kesatuan Republik Indonesia, 'Hukum Pidana, Narkotika Dan Psikotropika', 2019.

[16] Tarigan.

[17] Rozarie and Indonesia.

[18] Muridah Isnawati, 'The Urgence of Indonesian Penal Code (KUHP) Reform to Realize Humanistic-Based Imprisonment', *Borobudur Law Review*, 3.1 (2021), pp. 73–83, doi:10.31603/burrev.5337.

[19] Dwidja Priyatno, *Sistem Pelaksanaan Pidana Penjara Di Indonesia* (Refika Aditama, 2006).

[20] Sheikh Muhammad Adnan, Shaukat Hussain Bhatti, and Tauseef Adeel Hassan, 'A Critical Evaluation of the Theories of Punishment', *Zakariya Journal of Social Science*, 1.1 (2022), pp. 38–43, doi:10.59075/zjss.v1i1.46.

realized through the following stages: [21]

a. Imposition of criminal sanctions by the legislator.
b. Application of criminal sanctions by the authorized body.
c. Implementation of criminal sanctions by the competent enforcement agency.

According to Sudarto, penalization is synonymous with punishment. The term "punishment" is derived from the root word "law," meaning to establish or decide on the law (berechten). While legal decision-making concerns both criminal and civil law, this paper focuses on criminal law, where the term refers to sentencing or imposing penalties by judges. In this context, punishment is synonymous with "sentence" or "verdict." [22]

Andi Hamzah states that penalization is also known as sentencing or imposing penalties. In Dutch, it is called "strafoemeting," and in English, it is referred to as "sentencing." [23]

3. Certainty

According to Gustav Radbruch, a German legal philosopher, there are three basic ideas of law: justice, utility, and legal certainty [24]. Legal certainty, as a goal of law, can be seen as an effort to achieve justice through consistent application and enforcement of the law, regardless of who is involved. Legal certainty allows individuals to anticipate the consequences of their actions based on the law, upholding the principle of equality before the law and ensuring non-discrimination. [25]

Radbruch describes legal certainty as "scherkeit des Rechts selbst" (certainty about the law itself). Four aspects related to legal certainty include: [26]

a. Law is positive, meaning it consists of statutory regulations (gesetzliches recht).
b. Law is based on facts (tatsachen), not on evaluative judgments made by judges, such as goodwill and decency.
c. Facts must be clearly formulated to avoid misinterpretation and should be easy to enforce.
d. Positive law should not be frequently changed.

Legal certainty emerged from the evolution of legal positivism, which became prominent in the 19th century. It is fundamentally related to positive law, which refers to laws applicable within a specific country or under specific conditions, and is established in written form, such as statutes or regulations.

These rules generally contain provisions that guide individual behavior in society. The existence and enforcement of legal rules create legal certainty. According to Peter Mahmud, legal certainty includes two main aspects: first, the presence of general rules that allow individuals to understand what actions are permitted or prohibited; and

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[21] Adnan, Bhatti, and Hassan.

[22] Priyatno.

[23] Andreia De Castro Rodrigues and others, 'Prison Sentences: Last Resort or the Default Sanction?', *Psychology, Crime & Law*, 25.2 (2019), pp. 171–94, doi:10.1080/1068316x.2018.1511788.

[24] Nispul Khoiri and Adelina Nasution, 'Ḥaḍānah Conflict Resolution through Litigation: Analysis of Sharia Court Decisions in Aceh', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 22 (2022), pp. 177–98, doi:10.18326/ijtihad.v22i2.177-198.

[25] Try Widiyono and Md Zubair Kasem Khan, 'Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law', *Law Reform*, 19.1 (2023), pp. 128–47, doi:10.14710/lr.v19i1.48393.

[26] Muhamad Harisman, 'KEPASTIAN HUKUM HAK CIPTA ATAS KARYA DESAIN ARSITEKTUR DI INDONESIA DIKAITKAN DENGAN PRINSIP ALTER EGO TENTANG HAK CIPTA', *Jurnal Poros Hukum Padjadjaran*, 1.2 (2020), pp. 283–302, doi:10.23920/jphp.v1i2.238.

second, providing legal protection for individuals against arbitrary government actions, as general rules help individuals know what actions the state may take against them. [27]

4. Justice

Justice is one of the most extensively studied topics in philosophy. The issue of justice is intriguing to examine in depth due to its connections with morality, state systems, and societal life. Essentially, justice involves treating individuals or parties according to their rights. Every person has the right to be recognized and treated according to their dignity, with equal status, rights, and obligations, regardless of ethnicity, descent, or religion. [28]

Plato divided justice into individual and state justice. He described individual justice as the ability of a person to control oneself through reason. [29]

Aristotle classified justice into five forms:

a. Commutative justice, which involves treating individuals without considering their merits.
b. Distributive justice, which involves treating individuals according to their merits.
c. Natural justice, which involves giving something in return for what others have given to us.
d. Conventional justice, which involves adherence to all applicable regulations.
e. Corrective justice, which involves restoring the reputation of someone who has been wronged. [30]

According to Gustav Radbruch, the concept of justice is absolute, formal, and universal. What is just for one person is just for everyone. Therefore, justice often leads to demands and conflicts, and it also requires generalization or uniformity. [31]

2. RESEARCH METHODS

The type of research used in this study is normative legal research, also known as doctrinal legal research. In this type of research, the law is often conceptualized as what is written in legislation (law in the books) or as rules or norms that serve as behavioral guidelines for what is considered appropriate by society. [32] According to Mahmud Marzuki, normative legal research involves exploring legal principles, doctrines, and rules to address legal issues. Meanwhile, according to Soerjono Soekanto and Sri Mamudji, normative legal research requires the study of library sources or secondary data for legal analysis. [33]

This research employs legislative, case, and analytical approaches. The data used are secondary data obtained through library research, which consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include binding legal documents such as Case No. 889/Pid.Sus/2020/PN Mks, Law No. 35 of 2009 on Narcotics Crimes, Law No. 8 of 1981 on the Criminal Procedure

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[27] Peter Mahmud Marzuki and M S Sh, *Pengantar Ilmu Hukum* (Prenada Media, 2021).
[28] Muhammad Taufik, 'Filsafat John Rawls Tentang Teori Keadilan', *Mukaddimah: Jurnal Studi Islam*, 19.1 (2013), pp. 41–63.
[29] Taufik.
[30] Taufik.
[31] Soerjono Soekanto, *Beberapa Permasalahan Hukum Dalam Kerangka Pembangunan Di Indonesia* (Yayasan Penerbit Universitas Indonesia, 1976).
[32] S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris* (Prenada Media, 2018).
[33] Muhaimin Muhaimin, 'Metode Penelitian Hukum', *Dalam S. Dr. Muhaimin, Metode Penelitian Hukum, Mataram-NTB: Mataram*, 2020.

Code, and Law No. 48 of 2009 on Judicial Power. Secondary legal materials provide explanations of primary legal materials and include books and expert opinions. Tertiary legal materials provide guidance and explanations for primary and secondary legal materials and consist of sources such as the internet, the Fifth Edition of the Kamus Besar Bahasa Indonesia (KBBI), and legal dictionaries. [34] This research uses qualitative data analysis with a descriptive approach, meaning that the analysis does not use numerical data but provides descriptions and narratives of findings. Thus, it prioritizes the quality of data rather than quantity. Descriptive analysis means providing a comprehensive and systematic depiction of the data in accordance with actual facts. [35]

3. RESULTS AND DISCUSSION

Legal rules function as guidelines for behavior that embody fundamental values, which are not merely juridical issues but also encompass philosophical and sociological significance. According to Gustav Radbruch, law is based on three core values: justice, utility, and legal certainty. Sudikno Mertokusumo views legal certainty as the certainty of authority within the law. This principle is a concrete form of protection for seekers of justice, safeguarding them from arbitrary actions and ensuring they can achieve their goals under certain conditions. [36]

Every individual seeking justice naturally desires fair and balanced law enforcement. The effectiveness of laws should not solely depend on legislative regulations, which may sometimes be incomplete or misaligned with the needs of a dynamic and ever-evolving society. There is even a saying that "laws are sometimes created merely to satisfy the desires of those in power." The lack of clear procedures for determining when and how a draft law should be established, and within a specific timeframe, often results in laws that only benefit the interests of their creators.

Legal certainty, utility, and justice can only be fully realized through effective law enforcement. Without this, justice becomes incomplete and offers little benefit beyond the enforcement of legal certainty. Law enforcement must align with societal needs, and as society progresses, public awareness and understanding of the importance of law also increase. [37]

However, in practice, law enforcement often undermines legal certainty and justice. According to the author, this issue is also present in Decision No. 889/Pid.Sus/2020/PN Mks. To further examine this, it is crucial to first understand the judge's considerations in imposing a sentencing decision in Decision No. 889/Pid.Sus/2020/PN Mks, which generally include juridical and non-juridical (sociological) considerations. [38]

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[34] Muhaimin.

[35] Louise Doyle and others, 'An Overview of the Qualitative Descriptive Design within Nursing Research', *Journal of Research in Nursing*, 25.5 (2020), pp. 443–55, doi:10.1177/1744987119880234.

[36] Nuraid Fitrihabi, Rafikah Rafikah, and Ardian Kurniawan, 'Kepastian Hukum, Kemanfaatan Dan Keadilan Pemidanaan Kejahatan Asal Usul Perkawinan: Analisis Putusan No. 387/Pid. B/2021/PN. Jmb', *Al-Jinâyah: Jurnal Hukum Pidana Islam*, 7.2 (2021), pp. 484–509, doi:10.15642/aj.2021.7.2.484-509.

[37] Fitrihabi, Rafikah, and Kurniawan.

[38] Novi Anggraini Putri, 'Judgment Considerations Regarding Decisions about Child Sex Abuse Crime Conducted by Military Member', *Journal of Law and Legal Reform*, 1.2 (2020), pp. 241–58, doi:10.15294/jllr.v1i2.35421.

1. Juridical Considerations

Juridical considerations are those based on the juridical facts revealed in the trial and required by law to be included in the judgment. These consist of the prosecutor's indictment, witness testimonies, the defendant's statements, and evidence.

a. Prosecutor's Indictment

The indictment is a juridical construction of the defendant's actions revealed as a result of the investigation, combining these actions with elements of the crime according to relevant criminal laws. The indictment occupies a central and strategic position in criminal court proceedings, making it crucial for the success of the prosecution's task. From various interests related to criminal case examination, the functions of the indictment can be categorized as follows: [39]

1) For the court/judge, the indictment serves as the basis and scope for examination and grounds for decision-making.
2) For the public prosecutor, the indictment is the basis for proving/ juridical analysis, criminal charges, and legal actions.
3) For the defendant/defense counsel, the indictment is the basis for preparing a defense.

The indictment in Decision No. 889/Pid.Sus/2020/PN Mks is an alternative indictment. This indictment contains several layered accusations, where one layer serves as an alternative and excludes other layers. This form is used when certainty about which crime can be best proven is not yet available. Usually, proof of the indictment is not done sequentially but directly on the indictment considered proven. Once one indictment is proven, the others do not need further proof.

The alternative indictment in Decision No. 889/Pid.Sus/2020/PN Mks includes Article 112 paragraph (1) jo. Article 132 paragraph (1) of the Narcotics Law and Article 127 paragraph (1) jo. Article 132 of the Narcotics Law. [40]

a. According to Article 112 paragraph (1) of the Narcotics Law: "Any person who unlawfully possesses, stores, controls, or provides narcotics of Category I that are not plants, shall be punished with imprisonment for at least 4 (four) years and at most 12 (twelve) years and a fine of at least IDR 800,000,000 (eight hundred million rupiahs) and at most IDR 8,000,000,000 (eight billion rupiahs)."
b. According to Article 127 paragraph (1) of the Narcotics Law:
    1) Narcotics of Category I for personal use are punishable by imprisonment for up to 4 (four) years.
    2) Narcotics of Category II for personal use are punishable by imprisonment for up to 2 (two) years.
    3) Narcotics of Category III for personal use are punishable by imprisonment for up to 1 (one) year.
c. According to Article 132 paragraph (1) of the Narcotics Law: "Attempts or conspiracies to commit narcotics and precursor narcotics offenses as referred to in

[39] Surat Edaran Jaksa Agung Republik Indonesia, 'Surat Edaran Jaksa Agung Nomor SE-004/J.A/11/1993 Tahun 1993', *Hukumonline.Com*.
[40] Surat Edaran Jaksa Agung Republik Indonesia.

Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 129, shall be punished with the same imprisonment as specified in those articles."

In determining which article is most appropriate among these accusations for application to the defendant, the judge then considers other facts revealed during the trial.

b. Witness Testimony

A witness is:

1) A person who sees or knows an event (incident) firsthand.
2) A person requested to attend an event who is considered to know the occurrence so that if needed, can provide testimony confirming the event took place.
3) A person providing testimony before the judge for the benefit of the prosecution or defense.
4) Testimony (evidence) provided by a person who has seen or knows.
5) Proof of truth.
6) A person who can provide information for the purposes of investigation, prosecution, and trial about a criminal case that they have heard, seen, or experienced themselves.

According to Article 1 point 26 of the Criminal Procedure Code (KUHAP), a witness is a person who can provide testimony for the purposes of investigation, prosecution, and trial about a criminal case that they have heard, seen, or experienced themselves. Furthermore, according to Article 1 point 27 of KUHAP, witness testimony is one type of evidence in criminal cases, which includes information from witnesses about a criminal event that they have heard, seen, or experienced themselves, with reasons for their knowledge.

Recently, Decision MK No. 65/PUU-VIII/2010 expanded the definition of a witness and witness testimony in KUHAP beyond those who provide information based on firsthand experience. The Constitutional Court judged that the significance of witness testimony lies not in the witness's firsthand experience but in its relevance to the case. Thus, the relevance of witness testimony to the elements of the crime being investigated is crucial for proving whether a crime occurred or not. Therefore, witness testimonies collected by investigators must be consistent with each other to be considered as evidence. Additionally, for it to be deemed valuable proof, witness testimonies must align with other evidence.

Witness testimony in practice is often referred to as testimony. Testimony is a form of certainty given to the judge in court about the disputed event through oral and personal statements by someone who is not a party to the dispute, summoned appropriately by the court. Taking an oath is a mandatory condition for providing testimony. How the oath is administered is specified in Article 160 paragraph (3) of KUHAP, which states: "Before providing testimony, a witness must take an oath or promise according to their religion, that they will provide truthful information." [41]

[41] Riadi Asra Rahmad, 'Hukum Acara Pidana' (Rajawali Pers, 2019).

Witness testimony as evidence refers to what a witness states in court, which serves as evidence related to the issues at hand concerning proof. The value of witness testimony as evidence is as follows:

1) According to Article 1, Number 27 of the Criminal Procedure Code (KUHAP), what should be explained in court is what the witness has personally seen, heard, and experienced, including the reasons why the witness was able to see, hear, and experience those things.
2) Testimony given by a witness to investigators is not considered evidence; it serves only as a guide for the judge in examining the case in court.

Article 185 of KUHAP states that:

1) Witness testimony as evidence is what the witness states in court.
2) The testimony of one witness alone is not sufficient to prove that the accused is guilty of the charges against them.

The provision of Article 185 (2) of KUHAP is known by the term "unus testis nullus testis," meaning that the testimony of a single witness does not constitute evidence [42]. Based on the research, the witnesses presented by the public prosecutor in decision number 889/Pid.Sus/2020/PN Mks amounted to three. Therefore, the number of witnesses fulfills the requirement of Article 185 (2) KUHAP.

Based on decision number 889/Pid.Sus/2020/PN Mks, it can be concluded that essentially, the witness testimony revealed in court is as follows:

1) The defendant indeed bought methamphetamine.
2) The defendant gave the witness IDR 150,000 to buy methamphetamine.
3) The purpose of the defendant asking Rahmat Dg Lipung to buy methamphetamine was for joint consumption.
4) The defendant did not have permission from the authorities to consume methamphetamine.

Based on this witness testimony, it is concluded that the defendant indeed committed the crime as charged by the public prosecutor.

c. Defendant's Testimony

According to Article 1, Number 15 of KUHAP, the defendant is a suspect who is charged, examined, and tried in court. The defendant's testimony is what the defendant states in court about the acts they have committed, know, or personally experienced. Article 189 of KUHAP emphasizes:

1) The defendant's testimony is what the defendant states in court about the acts they have committed, or known, or personally experienced.
2) The defendant's testimony given outside of court can be used to assist in finding evidence in court as long as it is supported by valid evidence concerning the charges against them.
3) The defendant's testimony can only be used against themselves.

[42] S H Alfitra, *Hukum Pembuktian Dalam Beracara Pidana, Perdata, Dan Korupsi Di Indonesia* (RAIH ASA SUKSES, 2011).

4) The defendant's testimony alone is not enough to prove their guilt of the charges against them; it must be accompanied by other evidence.

The evidentiary value of the defendant's testimony includes: [43]

1) The value is discretionary, meaning the judge is not bound by the evidentiary value of the defendant's testimony. The judge is free to assess the truth contained within it and can accept or reject it as evidence with reasons given.
2) It must meet the minimum evidentiary threshold, meaning the defendant's testimony alone is not sufficient to prove their guilt but must be accompanied by other evidence as stipulated in Article 189 (4) KUHAP. This provision aligns with and reinforces the minimum evidentiary principle outlined in Article 183 KUHAP.
3) It must meet the judge's belief standard, meaning the judge's conviction must align with the evidentiary system.

According to Article 52 KUHAP, the defendant has the right to give testimony freely. This means that when providing their testimony, the defendant must not be coerced or pressured by anyone but is free to give testimony according to their own will.

Based on decision number 889/Pid.Sus/2020/PN Mks, the defendant essentially confirmed all the witness testimony. Therefore, the judge has increasing confidence that the defendant indeed committed the crime as charged by the public prosecutor.

d. Exhibts

KUHAP does not specifically define what constitutes exhibits. However, Article 39 (1) of KUHAP mentions what can be seized, including:

1) Items or claims of the suspect or defendant that are suspected to have been obtained from or as a result of a criminal act.
2) Items that have been directly used to commit or prepare for a crime.
3) Items used to obstruct the investigation of a crime.
4) Items specifically made or intended to commit a crime.
5) Other items that have a direct connection with the crime committed.

Article 42 of HIR states that officials, authorities, or other authorized individuals are required to investigate crimes and violations, and subsequently search for and seize items used to commit a crime as well as items obtained from a crime. The explanation of Article 42 HIR includes items that should be seized such as:

1) Items targeted by the crime (corpora delicti).
2) Items resulting from the crime (corpora delicti).
3) Items used to commit the crime (instrumenta delicti).
4) Items generally used to aggravate or mitigate the defendant's guilt (corpora delicti).

According to Andi Hamzah, evidence in criminal cases includes the items related to the commission of the crime (object delicti) and items used to commit the crime (instrumenta delicti), including items resulting from the crime. Characteristics of items that can be evidence include:

[43] M Yahya Harahap, 'Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali', 2002.

1) Being a material object.

2) Speaking for itself.

3) Being the most valuable form of proof compared to other evidence.

4) Must be identified with witness and defendant testimony.

Article 181 KUHAP requires the judge to show all evidence to the defendant and ask whether they recognize the evidence. If deemed necessary, the judge will present the evidence. Ansori Hasibuan argues that evidence is items used by the defendant to commit a crime or resulting from a crime, seized by investigators to be used as evidence in court. Thus, according to the opinions of several legal scholars, evidence includes:

1) Items used to commit a crime.

2) Items used to assist in committing a crime.

3) Items that are the target of a crime.

4) Items resulting from a crime.

5) Items that provide information for the investigation of the crime, whether in images or recordings.

6) Evidence that supports other evidence holds significant importance in criminal cases.

Evidence can also be presented in court but only functions to strengthen the judge's conviction regarding the occurrence of a crime and in deciding the case. Evidence can be tools or weapons used by the perpetrator, traces left by the perpetrator, and so on.

Based on decision number 889/Pid.Sus/2020/PN Mks, the evidence presented in court includes:

1) 1 (one) plastic sachet, size 2.5x4.5 cm, containing clear crystal methamphetamine with a lab-tested weight of 0.0608 grams.

2) 1 (one) blue Mio S brand helmet.

3) 1 (one) black Mito brand cellphone.

4) 1 (one) black Samsung brand cellphone.

Based on this description, the evidence presented in court includes witness testimony, defendant testimony, and exhibits. Thus, the judge is confident that the crime occurred as charged by the public prosecutor and that the defendant committed it. As stipulated in Article 183 KUHAP, a judge cannot sentence someone unless they are convinced by at least two valid pieces of evidence that a crime indeed occurred and that the defendant is guilty. The same is stipulated in Article 6 (2) of the Judicial Power Act, which states that no one can be sentenced unless the court, based on valid evidence according to the law, is convinced that the person held responsible is guilty of the charged act.

According to Article 183 KUHAP and Article 6 (2) of the Judicial Power Act, in sentencing the defendant, it must be:

1) Proven by at least two valid pieces of evidence.

2) Based on the minimum proof of two valid pieces of evidence, the judge must be convinced that the crime occurred and that the defendant is guilty.

Conviction is an attitude shown by a person when they feel sufficiently informed and conclude that they have reached the truth. Since conviction is an attitude, it is not always correct or a guarantee of truth. As a judge, one has subjective authority to determine whether someone is guilty or not. However, this conviction must not stand alone but be based on valid evidence or at least two valid pieces of evidence. Valid evidence is regulated in Article 184 (1) KUHAP, which includes witness testimony, expert testimony, documents, clues, and defendant testimony. In conclusion, a judge cannot convict someone solely based on their conviction; it must be supported by at least two valid pieces of evidence. It is from these pieces of evidence that the judge gains conviction about the guilt or innocence of the defendant.

Based on decision number 889/Pid.Sus/2020/PN Mks, the factual legal findings provided by the judge based on the evidence revealed in court state that the defendant is found guilty of the crime charged. Since the defendant was charged with an alternative charge, the panel of judges, considering the legal facts, chose the first alternative charge as regulated in Article 112 (1) in conjunction with Article 132 (1) of the Narcotics Law, which includes elements such as every person, without right and unlawfully possesses, stores, controls, or provides narcotics of Group I not derived from plants, and attempts or conspires to commit a crime. The judge's reasoning for each element is as follows:

a. Elements of Every Person
   1) Considering that the term "every person" as stipulated in the article is, according to the judge's opinion, identical to the term "anyone" in criminal law, which refers to the subject/actor of the crime itself, whether an individual or a legal entity, or anyone as a legal subject with rights and obligations who commits a crime and can be held accountable for their actions. In this case, the defendant facing trial is a man named Mustamin Dg Lipung, whose identity has been confirmed before the panel of judges.
   2) Considering that based on the testimonies of witnesses, the defendant's statements, and the evidence presented in court, it is clear that the defendant is indeed the perpetrator of the crime in this case, thus "the element of every person has been proven and fulfilled."
b. Element of Unlawfully and Illegally Possessing, Storing, Controlling, or Providing Narcotics of Group I Non-Plant
   1) Considering that on Tuesday, February 4, 2020, around 21:00 WITA, Rahmat Dg. Lipung accompanied the defendant on a motorbike to Gowa Regency, specifically to Oshin's house on Jalan Manggarupi, Kelurahan Somba Opu, Kab. Gowa, to meet the defendant's wife. Upon arriving in front of the house, the defendant gave Rahmat Dg Lipung IDR. 150,000 (one hundred fifty thousand rupiah) and said, "Go find some shabu, I'll wait here." Rahmat Dg. Lipung agreed and accepted the money, then proceeded to Makassar, specifically on Jalan Gotong Makassar. Around 17:40 WITA, the defendant called Rahmat Dg Lipung to ask about his location, and Rahmat Dg. Lipung replied, "Yes, I'm on my way back." At around 21:00 WITA, officers from the South Sulawesi Police Narcotics Directorate arrived, showing a photo of Rahmat Dg. Lipung and asking, "Do you recognize this photo?" The defendant replied, "Yes, sir, that's Rahmat." The defendant was then secured and taken to meet Rahmat Dg. Lipung. After meeting, the defendant was interrogated, "Did you really instruct Rahmat to buy

this shabu?" while showing a transparent plastic sachet measuring 2.5x4.5 cm containing clear crystal methamphetamine. The defendant answered, "Yes, sir, I gave IDR. 150 to buy shabu for us to use together." The defendant and Rahmat Dg Lipung were then secured along with the evidence.

2) Considering that based on the above facts, the panel of judges is of the opinion that the element of "unlawfully or illegally possessing, storing, controlling, or providing narcotics of Group I non-plant" has been fulfilled.

c. Committing an Attempt or Conspiracy

1) Considering that from the trial facts it is revealed that the defendant bought methamphetamine at the request of Mustamin Alias Dg. Solong (the defendant in another case file). Mustamin had given the defendant IDR. 150,000 and said, "Go find some shabu," and the defendant went to buy the narcotics, which were then hidden in the helmet strap to be delivered to Mustamin Alias Dg. Solong in Gowa Regency, intended for joint consumption. The defendant was intercepted by the South Sulawesi Police Narcotics Directorate officers during the trip, and evidence of a 2.5x4.5 cm plastic sachet weighing 0.0790 grams was found in the defendant's possession, hidden in the helmet strap. The methamphetamine was intended for delivery to Mustamin but was intercepted by the officers while the defendant was unlawfully possessing, storing, or controlling the narcotic.
2) Considering that based on the above considerations, the panel of judges is of the opinion that the element of "committing an attempt or conspiracy" has been fulfilled.

Based on the judge's considerations regarding the proof of elements of Article 112 paragraph (1) of the Narcotics Law, the author concludes that the judge believes the elements of Article 112 paragraph (1) have been fulfilled. However, upon closer examination, the defendant's role is "to instruct Rahmat Dg. Lipung to buy the shabu (narcotics)." The second element of Article 112 paragraph (1) of the Narcotics Law is "unlawfully and illegally possessing, storing, controlling, or providing narcotics of Group I non-plant." In the Indonesian Dictionary, instruct means to command (to do something). Therefore, instructing to buy shabu (narcotics) does not yet involve possessing, storing, or controlling it. Thus, according to the author, the second element of Article 112 paragraph (1) of the Narcotics Law has not been fulfilled.

Based on the above, the author believes that Article 112 paragraph (1) of the Narcotics Law is more appropriately applied to Rahmat Dg. Lipung. When Rahmat bought the narcotics, he had already possessed, stored, controlled, or provided the narcotics. Therefore, the defendant's fault is instructing Rahmat Dg. Lipung to commit the crime under Article 112 paragraph (1) of the Narcotics Law.

According to research, instructing to commit a crime under Article 112 paragraph (1) of the Narcotics Law is regulated under Article 133 paragraph (1) of the Narcotics Law, which states that "any person who instructs, gives or promises something, provides opportunities, encourages, facilitates, coerces with threats, coerces with violence, uses deceit, or persuades a minor to commit a crime as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129 shall be punished with death penalty or life imprisonment, or imprisonment for at least 5 (five) years and at most 20 (twenty) years, and a fine of at least IDR2,000,000,000.00 (two billion rupiah) and at most IDR20,000,000,000.00 (twenty billion rupiah)." Based on the description, the elements of Article 133

paragraph (1) of the Narcotics Law are:
1) Every person
2) Instructing, giving or promising something, providing opportunities, encouraging, facilitating, coercing with threats, coercing with violence, using deceit, or persuading a minor to commit a crime as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129.

The formulation of the second element uses the word "or," meaning not all of the second elements need to be fulfilled. The word "or" indicates that if one of the second elements is proven, then the element of Article 133 paragraph (1) of the Narcotics Law is fulfilled. As previously stated, the defendant's fault is "to instruct Rahmat Dg. Lipung to commit a crime under Article 112 paragraph (1) of the Narcotics Law," thus fulfilling the element of Article 133 paragraph (1) of the Narcotics Law.

Based on the research, Article 133 paragraph (1) of the Narcotics Law was not considered by the judge because it was not included in the prosecutor's indictment. The indictment serves as the basis for the judge in adjudicating a criminal case. Therefore, the judge should not decide on charges not brought by the prosecutor.

2. Non-Juridical Considerations

In determining a verdict, judges not only base their decisions on juridical considerations but also on non-juridical considerations. In the case of Decision No. 889/Pid.Sus/2020/PN Mks, the judge's non-juridical considerations include factors that aggravate and mitigate the defendant's punishment.

a. Factors Aggravating the Sentence

Factors that aggravate the sentence for the defendant include the defendant's actions being contrary to the Government of Indonesia's program in combating narcotic trafficking.

b. Factors Mitigating the Sentence

Factors that mitigate the sentence for the defendant include:

1) The defendant acknowledges and regrets his actions and promises not to repeat them.
2) The defendant has no prior convictions and is young enough to improve his future.

Based on the judge's juridical and non-juridical considerations, the judge sentenced the defendant to 3 (three) years in prison. The indictment chosen by the judge to apply to the defendant was the first charge, namely Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law. The penalty threatened in that article is a minimum prison term of 4 (four) years and a minimum fine of IDR 800,000,000 (eight hundred million rupiah). Based on this explanation, the author believes that the sentence imposed by the judge in Decision No. 889/Pid.Sus/2020/PN Mks represents a disparity between in abstracto and in concreto. In abstracto refers to general provisions outlined in legislation. What is outlined in the legislation includes a minimum prison term of 4 (four) years and a minimum fine of IDR 800,000,000 (eight hundred million rupiah). On the other hand, in concreto refers to specific provisions outlined in the court decision. What is outlined in the court decision is a prison sentence of 3 (three) years.

Based on Decision No. 889/Pid.Sus/2020/PN Mks, the reasons for the disparity between in abstracto and in concreto are as follows:

Considering that although the defendant was proven to have committed the crime under Article 112 paragraph (1) of the Narcotics Law, the legal facts revealed during the trial showed that the shabu owned by Rahmat Dg Lipung, bought at the defendant's request with a weight of 0.0790 grams, was solely intended for personal use or consumption together and was not proven for other purposes. Therefore, the panel believes that the penalty proposed by the Public Prosecutor was too high.

Considering that Circular Letter No. 3 of 2015 concerning the Implementation of the Plenary Meeting Results of the Supreme Court Chamber of 2015 as Guidelines for Court Tasks, states that if the defendant is proven to be merely a user and the evidence found from the defendant is relatively small (SEMA No. 4 of 2010), the judge may decide according to the indictment but can deviate from the minimum penalty provisions with sufficient consideration.

Based on this explanation, the author believes that the judge's consideration by quoting the Circular Letter No. 3 of 2015 is not appropriate because the narcotics bought at the defendant's request with a weight of 0.0790 grams being "solely for personal use or consumption together" is the defendant's confession in court. To prove the truth of the defendant's confession that "the narcotics were bought solely for personal use or consumption together," such confession should be supported by other evidence.

Article 189 paragraph (4) of the Criminal Procedure Code (KUHAP) states, "the defendant's testimony alone is not sufficient to prove that he is guilty of the alleged act unless it is accompanied by other evidence." Thus, to support negative proof and convince the judge to decide the case and identify the guilty party, it is not sufficient to rely solely on the defendant's confession or testimony.

According to Yahya Harahap, "what is implied in Article 198 paragraph (4) of the KUHAP means that a confession according to the KUHAP is not evidence with perfect probative value or volledige bewijs kracht, nor does it have decisive probative force or beslissende bewijs kracht." Based on this explanation, the material truth of the defendant's confession that "the narcotics were bought solely for personal use or consumption together" must be supported by other evidence. Since there is no other supporting evidence, the judge should not have quoted and considered Circular Letter No. 3 of 2015. Therefore, the alternative indictment, namely Article 127 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law, should not have been considered.

Based on this, the imposition of a sentence on the defendant should still be based on the first alternative charge, namely Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law as considered by the judge. The author believes that the prison sentence imposed by the judge on the defendant is not appropriate, as it is below the minimum threat and the judge also did not impose a fine.

The author believes that the sentencing in Decision No. 889/Pid.Sus/2020/PN Mks

undermines the value of "legal certainty." Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law contains the value of certainty, which includes a minimum prison sentence of 4 (four) years and a minimum fine of IDR 800,000,000 (eight hundred million rupiah). However, in fact, the judge sentenced the defendant to only 3 (three) years in prison and did not impose a fine. The penalty in Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law is cumulative between "prison sentence" and "fine." This indicates that the judge rendered Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law as "uncertain."

The law must be applied and enforced consistently. Society expects that laws are formed as a response to real events, reflecting the principle that the law must be enforced at all times—fiat justitia et pereat mundus (let justice be done though the world perish). This is the essence of legal certainty which functions as a safeguard against arbitrary actions. Legal certainty ensures that individuals can expect predictable outcomes in certain situations. Society values legal certainty because it fosters order, and the law is responsible for maintaining that order by providing legal certainty.

In addition to undermining the value of "legal certainty," the sentencing in Decision No. 889/Pid.Sus/2020/PN Mks also undermines the value of "justice." The penalties in Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law apply to anyone who violates them. Society has an interest in ensuring that the law and justice are upheld. The application or enforcement of the law must be done fairly. The law is universal and applies equally to all. For example, anyone who commits theft should be punished, regardless of who they are.

The imposition of a prison sentence below the minimum threat and the judge's failure to impose a fine as stated in Decision No. 889/Pid.Sus/2020/PN Mks seems to make justice subjective, individualistic, and unequal. The author believes that to ensure that the sentencing in Decision No. 889/Pid.Sus/2020/PN Mks does not undermine the values of legal certainty and justice, the judge should base the sentence on the penalties formulated in Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law.

4. CONCLUSION

Based on the discussion, the author concludes that the sentence imposed by the judge in Decision No. 889/Pid.Sus/2020/PN Mks represents a disparity between in abstracto and in concreto. In abstracto refers to general provisions outlined in legislation. What is outlined in the legislation includes a minimum prison sentence of 4 (four) years and a minimum fine of IDR 800,000,000 (eight hundred million rupiah). On the other hand, in concreto refers to specific provisions outlined in the court decision. What is outlined in the court decision is a prison sentence of 3 (three) years. This shows that the judge, in rendering the sentencing decision in this case, undermined the values of legal certainty and justice. The author suggests that the judge should always adhere to the formulated penalties when imposing a sentence.

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