

## Legal Analysis of Criminal Responsibility for Perpetrators of Drug Crimes Based on Justice

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**Abstract.** *Transnational drug crimes are carried out using sophisticated modus operandi and technology, including securing the proceeds of drug crimes. The development of the quality of drug crimes has become a very serious threat to human life. This thesis aims to study and analyze: First, the judge's considerations in sentencing perpetrators of drug crimes based on justice. Second, how criminal responsibility for perpetrators of narcotics crimes based on justice. This assessment is carried out objectively and subjectively. The approach method used is normative juridical, namely a library legal research conducted by examining library materials or secondary data only using deductive thinking methods. The writing specifications use descriptive analysis, the sources and types of data used are secondary data. The data collection method is by collecting data using secondary data collection methods. The problem is analyzed with the theory of criminal responsibility, the theory of punishment and the theory of justice. Criminal liability basically lies with the perpetrator, where in its provisions every act must be accountable except for provisions that have been regulated in laws and regulations that cause harm to others. Fulfillment of the requirements for criminal liability for Decision Number 463/Pid.Sus/2023/PN Smg. Thus, the defendant can be held criminally responsible for the crime of narcotics which is an intermediary in the sale and purchase of class I narcotics, the judge in sentencing the defendant chose imprisonment and a fine, namely imposing a sentence on the Defendant therefore with imprisonment for 5 (five) years and 10 (ten) months and a fine of Rp. 1,000,000,000, - (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with 4 (four) months in prison. Both criminal sanctions, both imprisonment and fines are imposed by the judge because in Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.*

**Keywords:** *Criminal; Narcotics; Responsibility.*

### 1. Introduction

Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause decreased or altered consciousness, loss of feeling, reduce and eliminate pain, and cause dependence. Indonesia is one of the largest archipelagic countries in the world, covering approximately thirteen thousand islands and Indonesian waters covering approximately seven straits that are very important for international shipping. These

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seven straits are the Malacca Strait, Singapore Strait, Sunda Strait, Lombok Strait, Ombai Strait, Wetar Strait, and Makasar Strait.<sup>1</sup>

Drug abuse encourages illicit trafficking, while illicit drug trafficking causes widespread abuse and international dimensions. Therefore, efforts are needed to prevent and overcome drug abuse and efforts to eradicate illicit trafficking considering the progress of communication, information and transportation in the current era of globalization. Drug abuse is closely related to illicit trafficking as part of the world of international crime.

The increasing cases of drug abuse recently have led the narcotics and narcotics precursor business to grow into one of the most lucrative businesses and it is not strange that the sale of narcotics and narcotics precursors has increased sharply every year so that the government is increasingly active in handling narcotics crime cases.<sup>2</sup>

In reality, the circulation of narcotics in Indonesia is increasingly easy to obtain by all levels of society, from officials, security forces, artists, students, even children. This is due to the large profits promised in a short time behind this illicit business, although it violates the law with the risk of severe sanctions such as the death penalty, but many people are willing to accept the risk for the sake of profit from this business, so that narcotics are not only found in big cities in Indonesia, but their circulation has reached small cities and even remote sub-districts and villages whose distribution is through land and sea routes that are organized very neatly and secretly, without regard to moral and religious interests.<sup>3</sup>

The case example in this thesis that will be the subject of research is about a narcotics case with a verdict in case Number 463/Pid.Sus/2023/PN Smg where the defendant with the initials RMD Bin Taufik Hidayah started on Monday, June 19, 2023 at around 08.00 WIB while relaxing at his boarding house, the defendant RMD was contacted by HLM (in the search) via WA Chat who ordered the defendant to take narcotics in the form of crystal methamphetamine with a promise of a wage in the form of money of IDR 500,000 (five hundred thousand rupiah) and consume the narcotics in the form of crystal methamphetamine for free so that the defendant agreed. then the Defendant took it home and when he arrived at the boarding house the Defendant contacted HLM via WA Chat and informed him that the Defendant had taken the crystal methamphetamine, then HLM ordered the Defendant to break the crystal methamphetamine into 19 (nineteen) packages weighing @1/2 gram and the Defendant immediately carried out the order by breaking the crystal methamphetamine into 20 (twenty) packages @1/2 gram with details of 19 (nineteen) packages @1/2 gram according to and 1 (one) package @1/2 gram as the Defendant's wages, then the Defendant took a little for his own use up to 8 puffs. The defendant was contacted again by HLM via WA Chat who ordered the defendant to address 8 (eight) packages of narcotics of the type of crystal methamphetamine @ 1/2 gram which the defendant had broken to an address in the North Semarang area so that the defendant rode his black-silver Honda Vario motorbike with the number plate H-3505-MW and went alone to the address to pick up the narcotics of the type of crystal methamphetamine.

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<sup>1</sup>Karman Jaya, Online Narcotics Buying and Selling Transactions Implementation and Formulation, Journal of Sharia and Law Volume 4 Number 1 June 2023, p. 39.

<sup>2</sup>Setyawati, et al., 2015, Book Series on the Dangers of Narcotics Volume I, Surakarta, Tirta Asih Jaya, p. 3.

<sup>3</sup>Directorate of Information Dissemination, Deputy for Prevention of the National Narcotics Agency of the Republic of Indonesia, "Narcotics in the View of Religion". BNN, Jakarta, 2012.

Based on the problems above, regarding the many phenomena of narcotics crimes so that people who do not know the rules for the community are careful and vigilant, such as the case registered at the Semarang District Court Number 463 / Pid.Sus / 2023 / PN Smg, it has become a special attraction for the author to study this in more depth by conducting research, for writing a thesis entitled "JUDICIAL ANALYSIS OF CRIMINAL RESPONSIBILITY AGAINST PERPETRATORS OF DRUG CRIMES BASED ON JUSTICE (Study of Decision Number: 463 / Pid.Sus / 2023 / PN Smg)".

## **2. Research Methods**

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied. Data collection is carried out through library studies by reviewing literature related to research problems. The data analysis technique is qualitative analysis in the form of exposure, description, and description of the research results.

## **3. Results And Discussion**

### **3.1. Judge's Considerations in Sentencing Narcotics Crime Offenders Based on Justice (Decision Study Number: 463/Pid.Sus/2023/PN Smg)**

Drug abuse is the use of narcotic drugs, psychotropic drugs, and addictive substances that are not in accordance with their function. This condition can cause addiction so that it can damage the brain which causes death. When someone is addicted to narcotics, it is difficult to break free from the addiction. In addition to brain damage, it also has a negative impact on the user's physical condition. Rehabilitation is very important to eliminate drug addiction.

A judge is a state judicial official who is authorized by law to try a case brought before him. The goal is clear, to realize substantive justice. Substantive justice is justice related to the content of the judge's decision in examining, trying, and deciding a case which must be made based on considerations of rationality, honesty, objectivity, impartiality, without discrimination, and based on conscience.<sup>4</sup>

Based on the formulation of Article 183 of the Criminal Procedure Code above, the evidentiary system used is in accordance with the Law, which is a combination of the system, namely between the positive and negative evidentiary systems. Consisting of two components in the evidentiary system, namely the evidentiary system must be carried out in accordance with the method and with the means of evidence that are valid according to the Law, and the judge's conviction must be based on the method and with the means of evidence that are valid according to the Law. In essence, the judge's considerations should also include the following matters:<sup>5</sup>

- a. The main issues and things that are acknowledged or the arguments that are not denied.
- b. There is a legal analysis of the decision regarding all aspects concerning all facts/matters proven in the trial.

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<sup>4</sup>Andre G. Mawey, "Judge's Considerations in Issuing a Verdict of Acquittal from All Legal Charges", Manado: UNSRAT, *Le Crimen* Vol. V, No. 2, 2016, p. 83.

<sup>5</sup>*ibid*, p. 142

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c. All parts of the Plaintiff's petition must be considered/tried one by one so that the judge can draw a conclusion about whether or not the claim has been proven and whether or not the claim can be granted in the verdict.

The provisions regarding the judge's considerations are regulated in Article 197 paragraph (1) letter d of the Criminal Procedure Code which stipulates: Considerations are compiled in brief regarding the facts and circumstances along with the evidence obtained from the examination at trial which is the basis for determining the defendant's guilt. The judge's considerations consist of legal considerations and facts in the trial. In addition, the panel of judges must master or be familiar with the theoretical and practical aspects, jurisprudence and case position being handled.<sup>6</sup>

In the case of Decision Number 463/Pid.Sus/2023/PN Smg which the author studied in this research, the defendant RMD had committed a narcotics crime which was carried out by the defendant being ordered by witness HLM to take methamphetamine and consume methamphetamine for free and the defendant agreed to it by asking for wages and was carried out by the defendant not only once but several times. As a result of his actions, the defendant RMD had to be tried at the Semarang District Court. The judge's considerations which are of a legal nature are the judge's considerations which are based on the legal facts revealed in the trial and by law have been determined as something that must be included in the decision.<sup>7</sup>

The judge in issuing the above decision in his considerations which are stated in the decision by considering the charges submitted by the public prosecutor with the charges in Article 114 paragraph (1) and the subsidiary charges of Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. That the charges are subsidiary in nature, the judge will prove the Primary charges first and if the Primary charges have been proven, the judge no longer needs to prove the subsidiary charges, with this the judge proves the elements of the primary charges charged by the closing public prosecutor in Article 114 paragraph (1).

In addition to legal considerations, judges in making decisions also make non-legal considerations. Legal considerations alone are not enough to determine the value of justice in sentencing, without non-legal considerations. Therefore, it is necessary to consider the aggravating and mitigating factors for the accused. The sentencing of criminal acts by judges includes aggravating and mitigating factors. This is stipulated in Article 197 paragraph (1) letter f of the Criminal Procedure Code which states that the sentencing decision contains aggravating and mitigating circumstances for the accused: Aggravating circumstances: The accused's actions did not heed programgovernment in eradicating narcotics and mitigating circumstances: The defendant behaved politely and admitted his actions so that the trial went smoothly, the defendant had never been convicted.

Based on the theory of justice, the decision of the panel of judges has reflected justice in the theory, as proven by disagreeing with the Defense (Pleat) from the Defendant's Legal Counsel who requested the lightest possible verdict so that considering the appropriate and fair punishment for the Defendant, the Panel of Judges is of the opinion that the Defendant's actions were inhumane and caused deep emotional wounds to the victim's family.

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<sup>6</sup>Lilik Mulyadi, 2007, Judge's Decision in Criminal Procedure Law, PT Citra Aditya Bakti, Bandung, pp. 193-194

<sup>7</sup>Rusli Muhammad, 2007, Contemporary Criminal Procedure Law, Citra Aditya Bakti, Bandung, p. 212.

This theory views punishment not as retribution for the perpetrator's mistake, but as a means to achieve the beneficial goal of protecting society towards prosperity. From this theory emerges the purpose of punishment as a means of prevention, namely general prevention aimed at society. Based on this theory, the punishment imposed is to carry out the intent or purpose of the punishment, namely to improve public dissatisfaction as a result of the crime. The purpose of punishment must be viewed ideally, besides that, the purpose of punishment is to prevent (prevent) crime. However, in imposing the sanction, the judge is free to mention the reasons for his beliefs or what is commonly called *vrije bewijstheorie* or also called the middle way based on the judge's beliefs to a certain extent. The judge decides a case, including the narcotics crime case committed by the defendant RMD alias RF based on the judge's beliefs as mentioned above. The judge's beliefs are divided into two directions, namely based on the judge's beliefs which are also commonly called conviction in time and the theory of proof based on the law negatively or *negatief wettelijk bewijstheorie*.

### **3.2. Criminal Accountability for Narcotics Crime Perpetrators Based on Justice (Decision Study Number: 463/Pid.Sus/2023/PN Smg)**

Criminal responsibility arises because someone has committed an offense. Criminal responsibility can only be imposed on the person who committed the crime. The ability to bear responsibility is regulated in Paragraph 1 of Article 44 of the Criminal Code: "A person who commits an act for which he cannot be held responsible because his soul is disabled in the process of its development or disturbed due to mental disorders cannot be charged with committing a crime."

The fulfillment of the requirements for criminal responsibility according to Moeljatno regarding Decision Number 463/Pid.Sus/2023/PN Smg. Thus, the defendant can be held criminally responsible for the narcotics crime of being an intermediary in the sale and purchase of class I narcotics committed by the defendant. Based on the principle of no crime without fault, the imposition of a sentence by the Semarang District Court judge in Decision Number 463/Pid.Sus/2023/PN Smg. is appropriate, because it is in accordance with the severity of the defendant's mistake which is seen in the case that the defendant has been a narcotics intermediary twice and is also a user, and in accordance with the sense of justice of the community.

With various forms of punishment in the form of the death penalty, imprisonment, fines, and actions in the form of social and medical rehabilitation in Law Number 35 of 2009 concerning Narcotics, the judge in sentencing the defendant chooses imprisonment and a fine, namely sentencing the defendant to a prison sentence of 5 (five) years and 10 (ten) months and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with 4 (four) months in prison. Both criminal sanctions, both imprisonment and fines are imposed by the judge because in Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics as in the combined charge, because in this form the cumulative charge is combined or combined with the alternative or subsidiary charge, which requires the judge to impose both, namely criminal sanctions and fines.

According to the author, based on the theory of legal responsibility which is based on the principle of legality and the principle of culpability (principle of humanity). Legally, the principle of legality is contained in Article 1 paragraph (1) of the Criminal Code which states: "No act can be punished, except by virtue of criminal regulations in existing legislation, before

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the act is committed", while the principle of fault includes all acts that are committed intentionally (*dolus*) or those committed due to negligence (*culpa*).

Regarding the misuse of narcotics class I, the defendant with the initials RMD, where according to Article 45 of the Criminal Code, can be held accountable for his actions before the law. The second element is to determine the form of error made by the defendant, whether intentionally or due to negligence or negligence. From the chronology of the incident above, it can be concluded that the defendant with the initials RMD intentionally stored narcotics class I, the type of marijuana, and intended to sell it. Intentional here can be seen from the series of actions carried out by the defendant. The third element is that there is no reason for the elimination of criminal penalties or reasons for forgiveness. Reasons for forgiveness are reasons that eliminate the perpetrator's guilt in criminal law.

#### **4. Conclusion**

The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to also containing benefits for the parties concerned so that the judge's consideration must be addressed carefully, well, and carefully. In the Criminal Case Decision No. 463 / Pid.Sus / 2023 / Pn Smg, the defendant RMD was charged with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Based on the statements of witnesses, experts, and evidence revealed at the RMD trial, it has been legally and convincingly proven guilty of committing a crime without rights and against the law of receiving, being an intermediary in the sale and purchase, and handing over Class I Narcotics, not plants. The form of legal responsibility for a person acting as a narcotics intermediary in Decision Number 463/Pid.Sus/2023/PN.Smg in the eyes of the judge is the defendant with the initials RMD by carrying out the sentence imposed by the judge in the form of imprisonment for 5 (five) years and 10 (ten) months and a fine of IDR 1,000,000,000, - (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with 4 (four) months in prison.

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