

Decision of Acquisition Due to The Removal of Authority to Prosecute Criminal Punishment in Category I Narcotic Crimes (Case Study of Decision Number: 90/Pid.Sus/2023/Pn Sdr)

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Abstract. *The study aims to provide the legal implications of acquittal decisions due to the elimination of the authority to prosecute criminal acts of Class I Narcotics at the Sidenreng Rappang District Court as legal responsibility, and the judge's legal considerations in acquittal decisions due to the elimination of the authority to prosecute criminal acts of Class I Narcotics at the Sidenreng Rappang District Court. The sociological legal approach method is an approach to studying and discovering legal realities experienced in the field or an approach that is based on problems concerning legal matters and existing realities, using the theory of Pancasila Justice and the Legal System. The results of the research and discussion are that (1) The legal implications of the acquittal decision due to the elimination of the authority to prosecute criminal acts in Class I Narcotics crimes at the Sidenreng Rappang District Court as the defendant's legal responsibility is released from all criminal charges for the case, but the act charged is still recognized as having been committed. Other legal implications can result in two sides, namely it can have a good impact and can also have a bad impact on all parties. The positive impact of the acquittal decision is to provide justice, certainty and benefits to the defendant as one of the fulfillments of the objectives of the law. (2) The judge's legal considerations in the acquittal decision due to the elimination of the authority to prosecute criminal acts in Class I Narcotics crimes at the Sidenreng Rappang District Court, the judge considers several important things when issuing an acquittal decision due to the elimination of the authority to prosecute criminal acts. These things include evidence in court, charges, demands, witness statements, and other facts that support the judge's decision. In addition, the judge also considers legal and non-legal reasons, such as the defendant's background. The Supreme Court's decision stated that the defendant was not proven legally and convincingly guilty of committing the acts as charged in the public prosecutor's indictment.*

Keywords: *Acquittal; Narcotics; Prosecution.*

1. Introduction

Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law. This article emphasizes that everyone has the right to recognition, guarantee, protection, and certainty of fair law, and to be treated equally before the law.¹ Although Article 28D paragraph (1) explains the right to equal protection, several incidents often violate this article, such as the case of narcotics in which the implementation has not provided clear categories of narcotics addicts, narcotics abusers, and victims of narcotics abuse.²

Narcotics and psychotropics are drugs or materials that are useful in the fields of medicine, health services, and scientific development. The impact of such use can cause a very detrimental dependency if used without control, strict and careful supervision.³

The definition of narcotics is contained in Law Number 35 of 2009 concerning Narcotics, Article 1 number (1), namely:

Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain and can cause dependency, which are divided into groups as attached to this Law.

Mardani's opinion is that what is meant by narcotics is as follows:

Narcotics are drugs or substances that can calm the mind, cause unconsciousness or anesthesia, eliminate pain and discomfort, cause drowsiness or stimulation, can cause stupor, and can cause addiction or dependency and are determined by the Minister of Health as narcotics.

According to Smith Kline and French Clinical in his book Mardani, who defines narcotics as:

Narcotics are drugs which produce insensibility or stupor due to their depressant effect on the central system. Include in this definition are opium, opium derivatives (morphine, codien, heroin) and synthetic opiates (meperidine, methadone).

Meaning: Narcotics are substances that can cause unconsciousness or anesthesia because these substances work by affecting the central nervous system. In this definition of

¹ Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia

² Public Relations Bureau of Legal Cooperation, Ministry of Law and Human Rights of the Republic of Indonesia Retrieved from Revision of the Narcotics Bill, DPR Discusses Six Points of the Government's Proposal, <https://www.kemenkumham.go.id/berita/revisi-ruu-narkotika-dpr-bahas-enam-poin-usulan-government> accessed May 20, 2025.

³ Jason Laoly, 2019, Snare Turning off Perspective Economic Wellbeing In Drug Abuse, PT Pustaka Alvabet, Jakarta, p.3

narcotics, it includes types of opium, such as morphine, cocaine and heroin or substances made from opium, such as (meripidine and methadone).⁴

Narcotics Classification in Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics:

1. Class I narcotics are narcotics that can only be used for scientific development purposes and are not used in therapy, and have a very high potential to cause dependency.
2. Class II narcotics are narcotics that have medicinal properties and are used as a last resort and can be used in therapy.

and/or for the purpose of developing knowledge and has a high potential for causing dependency.

3. Class III narcotics are narcotics that have medicinal properties and are widely used in therapy and/or for scientific development purposes and have a mild potential to cause dependency.⁵

Based on the explanation of the definition of narcotics above, the impact of the dangers of using narcotics that are not in accordance with the provisions is a serious threat to the Indonesian nation. This is according to data released by the Task Force for Combating Drug Abuse and Illicit Trafficking (P3GN) in 2023, which managed to uncover around 39 thousand drug cases, with 31,415 cases or around 79.7%. The evidence of narcotics confiscated in these cases has an economic value of tens of trillions of rupiah.⁶ Meanwhile, the National Narcotics Agency (BNN) and law enforcement officers have made efforts to handle narcotics crimes by processing all the perpetrators in court.⁷

The position of drug users becomes difficult to position whether as perpetrators or victims of drug crimes. If positioned as a perpetrator, they will be punished and fined, while positioned as a victim, they will be directed to rehabilitation.⁸ So it is necessary to have effective legal protection efforts in carrying out prevention and handling.

The legal protection provided can hinder drug trafficking, even though there is Law Number 35 of 2009 concerning Narcotics which requires a more holistic and sustainable approach

⁴ Mardani, 2008, Drug Abuse in the Perspective of Islamic Law and National Criminal Law, Raja Grafindo, Jakarta, p. 78

⁵ Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics

⁶ Azhar Bagas Ramadhan, 2023, Police Handle 39 Thousand Drug Cases During 2023, Evidence Reaches IDR 12 T, Source: <https://news.detik.com> accessed February 11, 2025.

⁷ Ahmad Rifai, 2014, Discovery of Law by Judges in the Perspective of Progressive Law, Sinar Grafika, Jakarta, p.95

⁸ Public Relations Bureau of Legal Cooperation, Ministry of Law and Human Rights of the Republic of Indonesia Retrieved from Revision of the Narcotics Bill, DPR Discusses Six Points of the Government's Proposal, <https://www.kemenkumham.go.id/berita/revisi-ruu-narkotika-dpr-bahas-enam-poin-usulan-government> accessed May 20, 2025.

from the authorities.⁹ So that in the process of making a decision, a judge must be sure whether a defendant has committed a crime or not, while still being guided by evidence to determine the guilt of the actions committed by a criminal perpetrator.¹⁰ The ambiguity of these regulations will lead to misinterpretation in giving criminal sanctions.

The criminal punishment system for perpetrators of narcotics crimes has undergone many updates. There are provisions for narcotics crimes regulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP) with the inclusion of narcotics crimes in the National Criminal Code providing a novelty and even a basic assumption that drug abuse is in principle a fairly serious crime. So that the presence of criminal guidelines in the National Criminal Code provides many changes in the criminal law system that has been implemented so far.

Criminal law updates through the National Criminal Code, especially in special crimes, where there are several crimes that are specifically regulated by the National Criminal Code, so that the criminal sanctions are also special. Such as narcotics crimes, as explained in Article 54 paragraph (1) of the National Criminal Code, the provisions are outlined that in sentencing the following must be considered:

- a. form of guilt of the perpetrator of the crime
- b. motive and purpose of committing a crime
- c. the inner attitude of the perpetrator of a crime
- d. Criminal acts are committed with or without planning

The explanation above can be understood that the lightness of a criminal act, the personal circumstances of the perpetrator, or the situation when the crime was committed and the events that occurred afterwards can be used as a basis for consideration not to impose a criminal penalty or not to impose action, by considering aspects of justice and humanity. In accordance with Article 54 paragraph (2) of the National Criminal Code, it explains the conditions for applying a judge's pardon. The conditions for applying a judge's pardon are the lightness of the act, the personal circumstances of the perpetrator, the circumstances when the crime was committed, the circumstances that occurred after the crime was committed.¹¹

The authority of judges in issuing decisions judges have broad authority in issuing decisions by considering 11 (eleven) standards of punishment. So that with the implementation of the Special Criminal Acts Chapter, the authority held by law enforcement agencies remains

⁹Nur Alim Rachim and M. Aris Munandar, 2023, Legal Aspects of Criminal Acts of Narcotics Abuse, KBM Indonesia Publisher, Yogyakarta, p.3

¹⁰ Ahmad Rifai, 2014, Discovery of Law by Judges in the Perspective of Progressive Law, Sinar Grafika, Jakarta, p.95

¹¹ Article 54 paragraph (2) of Law Number 1 of 2023 concerning the Criminal Code
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intact and they have the authority to handle criminal acts such as terrorism, corruption, money laundering, and narcotics. As in the application of judicial pardon provisions, it is considered to be still abstract, so that from one case to another the application may be different. This aims to maintain a balance between justice and legal certainty.¹²

An example of the application of Judicial Pardon or judicial forgiveness is not something new in the Indonesian judiciary. Because, it has been regulated in Article 70 Law Number 11 of 2012 regarding the Juvenile Criminal Justice System, which explains that:

"The lightness of the act, the personal circumstances of the child, or the circumstances at the time the act was committed or what happened later can be used as a basis for the judge's consideration not to impose a criminal penalty or to take action by considering aspects of justice and humanity."¹³

The above provisions only apply to criminal cases committed by children under the age of 18. Then it is regulated in Article 54 paragraph (2) of the National Criminal Code, thus the application of Judicial Pardon or the judge's forgiveness cannot be applied to perpetrators other than children.

Punishment is the culmination of the entire process of someone's responsibility for a criminal act, it can be said to be very important in criminal law. If a mistake is understood as "blameable", then punishment is the "embodiment of the blame". So that criminal law without punishment means declaring someone guilty without any definite consequences for their mistake. While the concept of guilt has a significant influence on the imposition of punishment and the implementation process.¹⁴ Thus, the imposition of punishment with the judge's decision, the parties in a criminal case, especially the defendant, can obtain legal certainty about their status and at the same time can prepare for the next steps.

The existence of a judge's decision is an official statement from a judge issued in court to end or resolve a case or dispute between the parties. This decision is the final result of the legal process and has binding legal force, meaning that the decision must be obeyed by the parties concerned. In addition, the judge's decision is also a conclusion of the results of the examination of the case in court or the peak reflection of the values of justice, the essential truth of human rights.¹⁵ The decision is pronounced by the judge because of his position in a criminal trial that is open to the public after going through the process and procedures of criminal procedure law. Generally contains a warning criminalization or acquittal or release

¹² <https://www.hukumonline.com/berita/a/11-hal-yang-wajib-dipertimbangkan-hakim-dalam-criminalization-lt616510607b4d4/?page=2> accessed May 13, 2025

¹³ Article 70 Law Number 11 of 2012 about the Juvenile Criminal Justice System

¹⁴ Chairul Huda, 2011, From No Crime Without Fault Towards No Criminal Responsibility Without Fault: A Critical Review of the Theory of Separation of Criminal Acts and Criminal Responsibility, Kencana Prenadamedia Group, Jakarta, p.125

¹⁵ Lilik Mulyadi, 2012, Normative Criminal Procedure Law, Theoretical, Practical and its Problems, PT. Alumni, Bandung, p.201

from all legal charges is made in written form with the aim of resolving the case.¹⁶ In reality, in court we often find that the defendant gets an acquittal (*onslag van rechtsvervolging*). Where the judge's decision states that the defendant did commit the act charged, but the act is not a criminal act, so the defendant is found to be free from all charges.¹⁷

The difference between an acquittal and an acquittal can be viewed from the legal aspect of evidence, namely in an acquittal (*vrijspraak*) the criminal act charged by the prosecutor/public prosecutor in the indictment has not been proven legally and convincingly according to the law. In other words, the minimum principle of proof has not been fulfilled, namely with at least 2 valid pieces of evidence and accompanied by the judge's conviction.¹⁸ Meanwhile, in an acquittal (*onslag van recht vervolging*), all legal charges for the actions committed by the defendant in the prosecutor/public prosecutor's indictment have been proven legally and convincingly according to the law, however the defendant cannot be sentenced to a criminal offense, because the act is not a criminal act, for example in the field of civil law, customary law or commercial law.¹⁹

Explanation of Article 191 paragraph (1) and paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) which regulates decisions of acquittal and acquittal, as follows:

(1) If the court is of the opinion that from the results of the examination at trial, the defendant's guilt for the act he is accused of has not been proven legally and convincingly, then the defendant is declared acquitted.

(2) If the court is of the opinion that the act of which the defendant is accused has been proven, but the act does not constitute a criminal act, then the defendant is acquitted of all legal charges.²⁰

The explanation above of Article 191 paragraph (1) of the Criminal Procedure Code states that what is meant by "the act of which he is accused has not been proven legally and convincingly" is not sufficiently proven according to the judge's assessment on the basis of proof using evidence according to the provisions of criminal procedure law.²¹ In a judge's decision, it is basically a work of finding the law, namely determining how it should be according to the law in every event concerning life in a country of law, in other words,

¹⁶ Lilik Mulyadi, 2007, *Compilation of criminal law from a theoretical perspective and pre-trial practice*, Mandar Maju, Jakarta, p. 127

¹⁷ Ibid,

¹⁸ Article 183 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP).

¹⁹ Lilik Mulyadi, 2007, *Criminal Procedure Law*, PT Citra Aditya Bakti, Bandung, p.152

²⁰ Article 191 paragraph (1) and paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP)

²¹ M.Hamdan, 2014, *Reasons for the Elimination of Criminal Law Theory and Case Study*, PT. Refika Aditama, Bandung, p.3

regarding the judge's decision, namely the result of deliberations that start from the indictment with everything that is proven in the examination at the court hearing.²²

Decision to be acquitted of all legal charges (*onslag van recht vervolging*) is a form of court decision that causes the lapse of the authority of the public prosecutor to prosecute a crime for an act. This decision means that even though the act charged has been proven, the act does not fulfill the elements of a crime, so it cannot be subject to criminal punishment. While in criminal law there are several reasons that can be used as a basis for judges not to impose criminal penalties on perpetrators or defendants who are brought to court because they have committed a crime, these reasons are called reasons for eliminating charges and criminalizing.²³

The reason for stopping criminal prosecution is a regulation that is mainly submitted to the judge. This regulation determines various circumstances of the perpetrator, who has fulfilled the formulation of the crime as regulated by the Law that should be punished, but is not punished. The judge in this case, places the authority in himself as the determinant whether there is a special condition in the perpetrator, as formulated in the reason for removing the criminal.²⁴

An example of a case that occurred in the Sidenreng Rappang District Court Number 90/Pid.Sus/PN Sdr dated May 30, 2023, the verdict of which stated that the defendant had been proven legally and convincingly guilty of committing a crime by intentionally failing to report a crime of buying and selling narcotics, as in the alternative indictment of the public prosecutor by sentencing the defendant to a sentence therefore with a prison sentence of 1 (one) year.²⁵ However, the defendant appealed with an appeal request Number 56/Akta.Pid/2023/PN.Sdr made by the Clerk of the Sidenreng Rappang District Court which stated that on May 31, 2023, the public prosecutor had filed an appeal against the Decision of the Sidenreng Rappang District Court Number 56/Akta.Pid/2023/PN.Sdr, dated May 30, 2023.

The legal facts that occurred were that the Makassar High Court accepted the appeal request from the public prosecutor, and overturned the decision of the Sidenreng Rappang District Court Number 56/Akta.Pid/2023/PN.Sdr, dated May 30, 2023 which was appealed. In the Makassar High Court decision, the defendant was legally and convincingly proven guilty of committing a Class I Narcotics crime as regulated in Article 114 paragraph (1) Jo Article 132 (1) of Law Number 35 of 2009 concerning Narcotics by sentencing the defendant to imprisonment for 6 (six) years and a fine of IDR 2,000,000,000, - (two billion rupiah), with

²² Syarifah Dewi Indawati, The Legal Basis for the Judge's Decision to Acquit of All Defendant's Legal Claims in Fraud Cases (Study of High Court Decisions and the Market Number: 24/Pid/2015/PT.DPS), *Verstek Journal* Volume 5 Number 2 of 2017. Url:<https://jurnal.uns.ac.id/verstek/article/view/33500> accessed May 20, 2025.

²³ A. Zainal Abidin Farid, 1990, *Criminal Law 1*, Sudarto Foundation, Semarang, p.189

²⁴ E. Ph. R. Sutorius and Arnem, 1988, *Reasons for Eliminating Special Errors*, FH Unila, Bandar Lampung, p. 1

²⁵ Sidrap District Court Decision Letter Number 90/Pid.Sus/PN Sdr dated May 30, 2023
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the provision that if the fine is not paid, it will be replaced with imprisonment for 6 (six) months.²⁶

Furthermore, the defendant filed an appeal filed by the defendant Number 61/Akta.Pid/2023/PN Sdr dated August 14, 2023. That in the cassation process, the Supreme Court granted the cassation request from the applicant (defendant), by canceling the High Court Decision.

Makasar Number 471/PID.SUS/2023/PT MKS dated July 28, 2023 which annulled the Decision of the Sidenreng Rappang District Court Number 90/Pid.Sus/2023 PN Sdr dated May 30, 2023. In the Decision, the Supreme Court stated that the defendant was not legally and convincingly proven guilty of committing the acts as charged in the public prosecutor's indictment, in its decision acquitted the defendant therefore from all charges and restored the defendant's rights in terms of his ability, position and dignity.

Seeing the case that occurred above in the Supreme Court (MA) decision which finally acquitted the defendant, because it was considered not to meet the elements charged by the public prosecutor. So based on this description, the author is interested in conducting a deeper study with the research title: Acquittal Decision Due to the Elimination of the Authority to Prosecute Criminal Charges for Class I Narcotics Crimes (Case Study of Decision Number: 90 / Pid.Sus / 2023 / Pn Sdr).

2. Research Methods

The type of research used is legal research conducted using the type of sociolegal research. That law can be studied and researched as a study of law that actually lives in society as a non-doctrinal and empirical study. Sociological legal research emphasizes the importance of empirical observation, observation and analytical steps or better known as sociolegal research.²⁷

3. Results and Discussion

3.1. Legal implications of acquittal decisions due to the elimination of the authority to prosecute criminal acts of Class I Narcotics at the Sidenreng Rappang District Court as legal responsibility

Criminal comes from the word straf (Dutch), which is sometimes referred to as punishment. The term criminal is more appropriate than the term punishment, because it is commonly a translation of recht.²⁸

The purpose of criminal law is to protect the interests of society from acts that threaten it or even harm individuals or groups. The nature of criminal law is that its existence can be

²⁶ Makasar High Court Decision Number 471/PID.SUS/2023/PT MKS dated July 28, 2023

²⁷ Sabian Utsman, 2013, Basics of Legal Sociology: Complete with Legal Research Proposal (Legal Research), Pustaka Belajar, Yogyakarta, p.310

²⁸ Adami Chazawi, 2010, Criminal Law Lessons Part I, Raja Grafindo Persada, Jakarta, p. 24
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enforced by imposing criminal sanctions on those who violate the provisions of criminal law, through law enforcement officers such as the Police, Prosecutors, Judges and Correctional Institutions in accordance with applicable laws and regulations.²⁹ So that the existence of rules that are regulatory and force members of society to obey and comply with them will cause balance and peace in their lives. In addition, the purpose of criminal law is to scare people so that they do not commit crimes (preventive). To educate or improve people who have shown a liking for committing crimes so that they become good people (repressive).³⁰

The existence of narcotics and illegal drugs crimes is now transnational and is carried out using sophisticated procedures and sophisticated technology. Law enforcement officers are expected to be able to prevent and overcome these crimes in order to improve the morale and quality of Indonesia's human resources. Especially for the next generation of this country.

If taken without careful restrictions and supervision, these drugs can endanger the health and even the life of the user.³¹

The level of handling of narcotics crime cases at the court level, judges in handling the case as an effort to uphold the law and justice through the judicial process. Starting from examining, deciding, and resolving the case submitted to him, and issuing a verdict that takes into account justice, benefits, and legal certainty.³² Furthermore, Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power emphasizes that judges and constitutional judges are required to explore, follow, and understand the legal values and sense of justice that live in society. This shows that judges must not only be guided by written legal rules, but also understand the values that apply in society. So that the basis for judges in issuing court decisions needs to be based on theories and research results that are interrelated, so that maximum and balanced research results are obtained in theory and practice.³³

According to Sudikno Mortokusumo who explained that judges in deciding a case in court based on casuistics, are always faced with 3 (three) legal principles, namely legal certainty, the principle of justice, and the principle of legal benefit. According to him, the three principles, namely the principle of legal certainty, justice, and the principle of legal benefit must implemented through compromise, namely by applying the three legal principles in a balanced and proportional manner.³⁴

Law Number 48 of 2009 concerning Judicial Power, which regulates a number of principles for the implementation of judicial power. These principles are stated in Chapter II, from

²⁹Moeljatno, 1993, Principles of Criminal Law, Rineka Cipta, Jakarta, p.1

³⁰PAF Lamintang, 1984, Basics of Indonesian Criminal Law, Sinar Baru, Bandung, pp. 1- 2

³¹Moh. Taufik Makarao, Suhasril, and Moh. Zakky, 2003, Narcotics Crimes, Ghalia Indonesia, Jakarta, p.1

³²Sunaryo, S, 2014, Selected Chapters on the Criminal Justice System, University of Muhammadiyah Malang, Malang, p.281

³³Ibid,

³⁴ Mertokusumo, Sudikno. Plato, A, 1993, Chapters on the Discovery of Law, Citra Aditya Bakti, Jakarta, p.10
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Article 2 to Article 17 of Law Number 48 of 2009 concerning Judicial Power. The principles for the implementation of judicial power are as follows:

1. The trial is carried out "for the sake of justice based on the Almighty God".
2. The state judiciary implements and enforces law and justice based on Pancasila and is regulated by law.
3. The trial is carried out simply, quickly and at low cost.
4. In carrying out their duties and functions, judges and constitutional judges are required to maintain the independence of the judiciary; namely by creating a judiciary that is free from interference from other parties.
5. The court judges according to the law without discriminating against people.

Based on the description above, the freedom of judges in examining and trying a case is a crown for judges and must continue to be guarded and respected by all parties without exception, no party can intervene with the judge in carrying out his duties.³⁵ So that the decision pronounced by the judge because of his position in a criminal trial that is open to the public after carrying out the general criminal procedure process and procedures, which contains a criminal sentence or acquittal or release from all legal charges is made in writing with the aim of resolving the case.³⁶

One of the criminal sentences or decisions to acquit all legal charges that occurred in the Sidenreng Rappang District Court Number 90/Pid.Sus/PN Sdr dated May 30, 2023, the decision of which stated that the defendant had been proven legally and convincingly guilty of committing a crime by intentionally not reporting the crime of buying and selling narcotics, as in the alternative indictment of the public prosecutor by sentencing the defendant to a prison sentence of 1 (one) year.³⁷ However, the defendant appealed with a request appeal Number 56/Akta.Pid/2023/PN.Sdr made by the Registrar

The Sidenreng Rappang District Court stated that on May 31, 2023, the public prosecutor had filed an appeal against the Sidenreng Rappang District Court Decision Number 56/Akta.Pid/2023/PN.Sdr, dated May 30, 2023.

The legal facts that occurred in the Makassar High Court accepted the appeal request from the public prosecutor, and overturned the decision of the Sidenreng Rappang District Court Number 56/Akta.Pid/2023/PN.Sdr, dated May 30, 2023 which was appealed. In the Makassar High Court decision, the defendant was legally and convincingly proven guilty of

³⁵Immanuel Christophel Liwe, The Authority of Judges in Examining and Deciding on Criminal Cases Submitted to the Court, Lex Crimen, Vol. 03 No. 01 of 2014. Url:<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/3847> accessed May 23, 2025.

³⁶Lilik Mulyadi, 2014, A Face of Judge's Decision in Indonesian Criminal Procedure Law; Perspective, Theory, Practice, Technique of Making and Its Problems, Citra Aditya Bakti, Bandung, p.129

³⁷Sidrap District Court Decision Letter Number 90/Pid.Sus/PN Sdr dated May 30, 2023
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committing a Class I Narcotics crime as regulated in Article 114 paragraph (1) Jo Article 132 (1) of Law Number 35 of 2009 concerning Narcotics by sentencing the defendant to imprisonment for 6 (six) years and a fine of Rp. 2,000,000,000, - (two billion rupiah), with the provision that if the fine is not paid, it will be replaced with imprisonment for 6 (six) months.³⁸

So the issue is the person, the defendant in persona is proven to be incompetent to be punished. In other words, there is a forgiving reason that makes the defendant not be punished as mentioned above. In such cases, what is not proven in the crime is the subjective element, there is no element of wrong schuld found in the perpetrator's intention that qualifies as deliberate. What was charged to the defendant was sufficiently proven legally both in terms of evidence according to the law and in terms of the minimum limit of evidence regulated by Article 183 of the Criminal Procedure Code. However, as mentioned above, his actions were proven not to be a criminal act. Strictly speaking, the acts that were charged and that have been proven, are not regulated and are not included in the scope of criminal law. So in essence, what was charged to the defendant is not a criminal act. Perhaps it is only a quasi-criminal act, as if the investigator and public prosecutor saw it as a criminal act.

The result of the acquittal from all charges is as if it were the same as an acquittal, because both do not impose criminal penalties on the defendant or grant an acquittal. However, from a legal perspective, there is a clear difference between the two, because a acquittal from all charges still provides the possibility of filing a lawsuit. the case in civil court. While judges in trying a case, especially those who adhere to the progressive and responsive views of the law, will dare to make a kind of antithesis to the sound and validity of the rules in the law. Judges are state judicial officials who are authorized by law to try a case brought before them.³⁹

The Supreme Court's decision is of the view that if the act of which the defendant was accused was proven, but the act did not constitute a criminal act, then the defendant was declared "free from all legal charges." (Article 191 paragraph (2) of the Criminal Procedure Code.⁴⁰ The decision to release from all legal charges or onslag van rechtsvervolging is regulated in Article 191 paragraph (2), which reads as follows:

"If the court is of the opinion that the act charged against the defendant is proven, but the act does not constitute a criminal act, then the defendant is acquitted of all legal charges."

Thus, the case can be declared a verdict of acquittal from all legal charges that must be determined if the act charged against the defendant is proven, but the act is not a criminal act. This verdict is called acquittal from all legal charges (onslag van rechtavervolging) or

³⁸Makasar High Court Decision Number 471/PID.SUS/2023/PT MKS dated July 28, 2023

³⁹Ahmad Rifai, 2010, *Discovery of Law by Judges in the Perspective of Progressive Law*, Sinar Grafika, Jakarta, p.3

⁴⁰HMA Kuffal, Op.,cit, p. 379

usually abbreviated as onslag. So if in the judge's opinion, the events in the indictment charged against the defendant are proven, but what is clear it is proven that it does not constitute a crime or violation, then the defendant in the judge's decision must be released from all legal charges.⁴¹ So the legal implications of the acquittal (onslag van recht vervolging) due to the elimination of the authority to prosecute criminal acts in Class I Narcotics crimes at the Sidenreng Rappang District Court as the defendant's legal responsibility is released from all criminal charges for the case, but the act charged is still recognized as having been committed. Although the defendant cannot be prosecuted again for the same act, a civil lawsuit may still be filed if the defendant's actions cause material losses to other parties.

Based on the interview results, the researcher then identified relevant issues that then the existence of an acquittal decision due to the elimination of the authority to prosecute criminal acts in Class I Narcotics crimes at the Sidenreng Rappang District Court can result in two sides, namely it can have a good impact and it can also have a bad impact on all parties. The granting of an acquittal decision cannot be decided immediately by the judge, everything is based on the available evidence and other supporting materials. The positive impact of an acquittal decision is to provide justice, certainty and benefits to the defendant as one of the fulfillments of the objectives of the law, providing understanding to various parties related to the acquittal decision. While the negative impact is that it will provide a bad example for society if there is an error in granting an acquittal decision, the victim will not get justice Regarding the defendant's actions, the law does not provide protection for the victim and so on.⁴²

According to Yudi Latif, the only principle of Pancasila formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia using the verb is a statement about one of the goals of the state in a series of words to realize social justice for all Indonesian people. A construction of social justice as a crystallization of morals.⁴³ In addition, Pancasila is often referred to as a way of life and ideology of the Indonesian nation. Pancasila as a way of life is used as a guide for all activities or activities of life and life in all fields. This means that all behavior and actions of every Indonesian must be inspired by and are a reflection of all the principles of Pancasila, because Pancasila as a way of life is always a unity, cannot be separated from one another.⁴⁴ So that Justice in Pancasila is based on the Fifth Principle, namely Social Justice for All Indonesian People. Social justice does not discriminate against anyone, but all people or Indonesian people who have the right and guarantee to obtain social justice.

⁴¹Djoko Prakoso, 1985, Justiciable Position in the Criminal Procedure Code, Ghalia Indonesia, Jakarta, p.270

⁴²Results of Interview with Sidenreng Rappang District Court

⁴³Yudi Latif, 2011, The Perfect State: Historicity, Rationality, and Actuality of Pancasila, Gramedia, Jakarta, p.606.

⁴⁴Moch Najib Yuliantoro, et al., Analysis of the Implementation of Pancasila Social Justice in the Population of Children with HIV/AIDS in Yogyakarta, Jurnal Filsafat, Vol. 9 No. 01 Year 2019. Url:<https://jurnal.ugm.ac.id/wisdom/article/view/40962> accessed February 14, 2025.

Yudi Latif's opinion cites Nicolaus Driyarkara's view that social justice is a special manifestation of humanitarian values. which is related to the spirit of compassion for others in human efforts to fulfill physical needs.⁴⁵

Justice means treating everyone with the principle of equal liberty, without discrimination based on subjective feelings, differences in descent, religion and social status. The existence of real disparities in national life, as a legacy of the injustice of the pre-Indonesian government, must be returned to a balanced point that runs straight, by developing different treatments (the principle of difference) according to the different living conditions of each person (group) in society, and by aligning the fulfillment of individual rights with the fulfillment of social obligations.⁴⁶

The construction of social justice in Pancasila is not only interpreted in economic terms, but the social justice aimed at by Pancasila is justice in all fields. The achievement of such justice ultimately gives birth to a prosperous state. In the concept of a welfare state, everyone is equal before the law and what is more important is that the state is run based on the rules of the law itself.⁴⁷ The realization of a welfare state is largely determined by the integrity and quality of state administrators, accompanied by the support of a sense of responsibility and humanity that radiates from every citizen.⁴⁸ So that the aspect of guilt is in the first place as the main basis for imposing criminal penalties on people who have committed criminal acts.

Thus, there is an error that is the basis for criminal liability, Criminal liability is determined by the judge to pass a verdict in every criminal case. It is stated in Article 1 of Law Number 48 of 2009 concerning Judicial Power that an independent State to organize trials to uphold law and justice based on Pancasila, for the sake of the implementation of the Law of the Republic of Indonesia.

3.2. Analysis of the judge's legal considerations in the acquittal decision due to the elimination of the authority to prosecute criminal acts of Class I Narcotics at the Sidenreng Rappang District Court.

The criminal justice system that is run based on the Criminal Procedure Code (KUHP), places the judge as the leader of the trial in the process of providing evidence and making a verdict. The role of the judge leading the trial is illustrated by the judge's monopolistic authority in determining the trial day, summoning and examining

⁴⁵Yudi Latif, 2014, *The Spring of Exemplary Role Models: Pancasila in Action*, Mizan, Jakarta, p.483.

⁴⁶Yudi Latif, *The Complete State...*, op.cit., p.585.

⁴⁷Abdul Hamid Tome, *Grounding Pancasila: Efforts to Institutionalize Pancasila Values in Village Community Life*, Al-Adl Journal, Vol. 13 No. 1 Year 2020. Url:<https://ejournal.iainkendari.ac.id/index.php/al-adl/article/view/1717> accessed February 14, 2025.

⁴⁸Yudi Latif, *The Complete State...*, op.cit., p. 607

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witnesses/experts/defendants/evidence to test and assess evidence and declare whether or not a criminal event has occurred.⁴⁹

Judges have the duty to receive, examine, and try, as well as decide cases which means resolving criminal disputes. Judges are also ordinary human beings who have weaknesses and shortcomings placed in a central position in upholding law and justice. So that judges in making decisions, must consider many things, both those related to the case being examined, the level of actions and mistakes made by the perpetrator, to the interests of the victim and his family and also consider the sense of justice of the community.⁵⁰

The judge's decision in a criminal case is a judge's decision known as the decision of the panel of judges at the first level or the decision of the district court judge. At the first level, which means The defendant still has the opportunity to file further legal action if the defendant states that he/she does not accept the decision.⁵¹ So that the judge's decision is the result of something that has been considered and assessed carefully beforehand by the judge in written or oral form.⁵² The judge's decision is a decision determined by the judge after carrying out the criminal procedure procedure which contains a sentence or acquittal or release from all legal charges made in written form with the aim of resolving the case.¹⁸⁴

According to Lilik Mulyadi, based on theoretical and practical vision, the judge's decision is:

"The verdict pronounced by a judge due to his/her position in a criminal trial that is open to the public after carrying out the criminal procedure process and procedures generally contains a sentence of punishment or acquittal or release from all legal charges made in written form with the aim of resolving the case."

In Barda Nawawi Arief's opinion, judges in making a decision in a court hearing can consider several aspects, namely:

1. The perpetrator's fault
2. Motives and accusations of committing a crime
3. How to commit a crime,
4. Good attitude of perpetrators of criminal acts
5. Life history and socio-economics

In essence, the judge's considerations should also include the following matters:

⁴⁹J.Pajar Widodo, 2013, *Becoming a Progressive Judge*, Bandar Lampung, p.15

⁵⁰Sunaryo, S., *Op.Cit.*, p.271

⁵¹Hartono, 2010, *Investigation and Enforcement of Criminal Law Through a Progressive Legal Approach*, Sinar Grafika, Jakarta, p.20

⁵²Lilik Mulyadi, 2007, *Compilation of Criminal Law in the Theoretical Perspective and Practice of Justice* (protection of crime victims, justice system and criminal policy, philosophy of punishment and legal efforts for judicial review by crime victims), Mandar Maju, Bandung, p. 69

1. The main issues and things that are acknowledged or the arguments that are not denied
2. There is a legal analysis of the decision regarding all aspects concerning all facts/matters proven in the trial.
3. 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 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. If the judge's consideration is not careful, good, and careful, then the judge's decision originating from the judge's consideration will be canceled by the High Court/Supreme Court.⁵³

The position of a judge in examining a case also requires evidence, where the results of the evidence will be used as a consideration in deciding the case. Evidence is the most important stage in the examination in court. Evidence aims to obtain certainty that an event/fact submitted is actually happened, in order to obtain a true and fair judge's decision.⁵⁴ Meanwhile, the decision handed down by the judge must be based on clear and sufficient considerations. Decisions that do not meet these provisions are categorized as decisions that lack sufficient consideration or *onvoldoende gemotiveerd*. The reasons used as considerations can be in the form of certain articles of laws and regulations, customary law, jurisprudence or legal doctrine.⁵⁵

By considering the above matters, the judge can make a decision that is in accordance with the law and the sense of justice of the community, and provide clarity for the defendant and related parties. In the cassation process, the Supreme Court (MA) granted the cassation request from the applicant (defendant), by canceling the Makasar High Court Decision Number 471 / PID.SUS / 2023 / PT MKS dated July 28, 2023 which canceled the Sidenreng Rappang District Court Decision Number 90 / Pid.Sus / 2023 PN Sdr dated May 30, 2023. So that the Supreme Court (MA) Decision stated that the defendant was not legally and convincingly proven guilty of committing the act as charged in the public prosecutor's indictment, in its decision acquitted the defendant therefore from all charges and restored the defendant's rights in his ability, position and dignity.

In line with this, Lawrence M. Friedman stated that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure

⁵³Barda Nawawi Arief, 2001, Problems of Law Enforcement and Crime Prevention Policy, PT. Citra Aditya Bakti, Bandung, p.23

⁵⁴Mukti Arto, 2004, Civil Case Practice in Religious Courts, 5th edition, Pustaka Pelajar, Yogyakarta, p. 140

⁵⁵Cristian H. Panelewan, Legal Review of Protection of Suspects' Rights in the Criminal Case Settlement Process, Social Science Journal, Vol. 2 No. 2, Year 2015.

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(structure of law), the legal substance (substance of the law) and the legal culture (legal culture). Legal structure Concerning law enforcement officers, the substance of law includes legislative instruments and legal culture is living law which is adopted in a society.⁵⁶

According to Lawrence M. Friedman, the following conditions must be met for the formation of an ideal regulation:

a. Legal Structure

The structure of a legal system consists of several parts: the number and size of courts, their jurisdiction (including the cases they are entitled to try), and the procedures for appeals from one court to another. The structure also refers to the structure of the parliament, the police, the powers of the president, and so on. The legal structure, also known as the "legal structure", consists of the existing legal institutions designed to implement the existing laws. This structure shows how the courts, parliaments, agencies, and judicial processes work and are carried out. About the legal structure Lawrence

M. Friedman explains:

"To begin with, the legal system has the structure of a legal system consisting of elements of this kind: the number and size of courts; their jurisdiction...Structure also means how the legislature is organized ...what procedures the police department follows, and so on. Structure, in a way, is a kind of cross section of the legal system...a kind of still photograph, with freezes the action."

b. Legal substance

The content is an additional component of the legal system. The material includes the rules, norms, and actual behavioral patterns of individuals involved in the system. Therefore, legal content refers to applicable and binding laws that help law enforcement agencies act. Legal substance according to Friedman:

"Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioral patterns of people within the system...the stress here is on living law, not just the rules in law books".

c. Legal culture

Legal culture refers to the attitude of society (including the legal community and law enforcement officers) towards the law and the legal system. Law enforcement will not succeed without the support of the community that participates in the legal system and its legal culture. Regarding legal culture, Friedman argues:

⁵⁶Darmoko Yuti Witanto, Judicial Discretion: An Instrument for Upholding Substantive Justice in Criminal Cases, ALFABETA, Bandung, 2013, p. 123.

"The third component of legal system, of legal culture. By this we mean people's attitudes toward law and legal system, their beliefs...in other words, is the climax of social thought and social force that determines how law is used, avoided, or abused."⁵⁷

These three components, legal substance, legal structure, and legal culture, can be achieved in the legal system. Legal structure and legal culture are interrelated, as shown by how the law functions. Legal culture consists of regulations. The social control framework is involved in the formation of the legal system in relation to social behavior.⁵⁸ So that the above, it can be said that the function of law enforcement law is to actualize legal rules to be in accordance with what is aspired to by the law itself, namely to realize human attitudes or behavior in accordance with the framework that has been determined by a statute or law.⁵⁹ So it can be determined that a judge is a position that represents God to uphold justice based on applicable legal principles and decide cases with the principles of wisdom and knowledge that he has.⁶⁰

4. Conclusion

Based on the description in chapter 3 (three) of the previous discussion results, this research can be concluded as follows: 1. The legal implications of an acquittal decision due to the elimination of the authority to prosecute criminal acts in Class I Narcotics crimes at the Sidenreng Rappang District Court as the defendant's legal responsibility is released from all criminal charges for the case, but the alleged act is still recognized as having been committed. Although the defendant cannot be prosecuted again for the same act, a civil lawsuit may still be filed if the defendant's actions cause material losses to other parties. Other legal implications can result in two sides, namely it can have a good impact and it can also have a bad impact on all parties. The granting of an acquittal decision cannot be decided immediately by the judge, everything is based on the available evidence and other supporting materials. The positive impact of an acquittal decision is to provide justice, certainty and benefits to the defendant as one of the fulfillments of the objectives of the law, providing understanding to various parties related to the acquittal decision. While the negative impact is that it will provide a bad example for society if it occurs error in giving an acquittal, the victim will not get justice for the defendant's actions, the law does not provide protection for the victim. 2. The judge's legal considerations in the acquittal decision due to the elimination of the authority to prosecute criminal acts against Class I Narcotics at the Sidenreng Rappang District Court, the judge considered several important things when issuing an acquittal decision due to the elimination of the authority to prosecute criminal acts. These things include evidence in court, charges, demands, witness statements, and other facts that support the judge's decision. In addition, the judge also considered legal and

⁵⁷Friedman, M. Lawrence, 2001, American Law An Introduction Second Edition, Translator Wishnu Basuki, Tetanusa, Jakarta, pp. 8-10

⁵⁸Lawrence M. Friedman, Legal System A Social Science Perspective, Irussellage Foundation, New York, 1975, p. 11-20,

⁵⁹Ibid,

⁶⁰Ibid,

non-legal reasons, such as the defendant's background. In the cassation process, the Supreme Court (MA) granted the cassation request from the applicant (defendant), by canceling the Makassar High Court Decision Number 471/PID.SUS/2023/PT MKS dated July 28, 2023 which canceled the Sidenreng Rappang District Court Decision Number 90/Pid.Sus/2023 PN Sdr dated May 30, 2023. Thus, the Supreme Court (MA) Decision stated that the defendant was not legally and convincingly proven guilty of committing the acts as charged in the public prosecutor's indictment, in its decision acquitted the defendant therefore from all charges and restored the defendant's rights in his ability, position and dignity.

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