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“Hermeneutics For Judges in Deciding Case Number: 66/Pid.Sus/2021/Pn. Brb”

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Abstract: This thesis research aims to find the basis of Hermeneutics in the Judge's Decision, in case Number 66/Pid.Sus/2021/Pn.Brpb, related to the problem of illegal narcotics trade and complex narcotics crimes because there are three factors causing the increase in illegal narcotics circulation, namely weak interdiction capacity which will result in an increase in the risk of illicit narcotics trafficking, increased narcotics abuse which results in increased demand for narcotics, and lack of cooperation between law enforcement agencies both nationally and internationally. This research uses a normative legal research method, namely, which is carried out by examining norms or laws as its source. This research aims to find legal rules, legal principles, or legal doctrines to answer the legal issues faced. The results of this research based on the Judge's decision state that the defendant's actions are considered to violate Article 114 paragraph (1) of Law No. 35/2009 concerning Narcotics, subsidiary Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning narcotics. In criminal cases such as Number 66/Pid.Sus/2021/Pn.Brpb, some of the bases underlying the use of hermeneutics in case Number 66/Pid.Sus/2021/Pn.Brpb include the complexity of legal facts, limitations of legal texts and plurality of Interpretation: Law is not an exact science. There is the possibility of various interpretations of a legal rule. Hermeneutics encourages judges to make critical and rational interpretations, by considering various points of view.

Keywords: Hermenutics, Judges, Case Decisions

INTRODUCTION

Humans have a tendency and need for certainty and justice. Because, only in the certainty of justice are humans able to actualize all their human potentials in a reasonable and good way. One of the functions of law is as a tool to create certainty and justice. Efforts that should be made to create certainty and justice are that the law must be implemented properly. The implementation of the law can take place peacefully, normally but can also occur due to violations of the law. In this case, the law that has been violated must be enforced, and it is hoped that in this enforcement of the law the law becomes a reality so that order and justice is realized.

Without legal certainty, people do not know what to do, which will ultimately cause unrest. However, placing too much emphasis on legal certainty, too strict adherence to legal regulations will also result in rigidity and it is possible that it will cause a sense of injustice. Whatever happens, the rules are like that and must be obeyed and implemented. And sometimes the law often feels cruel when implemented strictly (*lex dura sed tamen scripta*). Talking about law in general, society generally only looks at legal regulations in the sense of rules or statutory regulations, especially for practitioners. While we are aware that the law is not perfect, the law cannot possibly regulate all human life activities completely. Sometimes the law is incomplete or sometimes the law is unclear. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "The State of Indonesia is a state of law". (Indonesia, 1945) The concept of Indonesia as a state of law has the meaning that in the relationship between law and power, power is subject to law as the key to political stability in society.

Judges in carrying out their duties are not easy because judges are considered to have to represent the voice of the silent and unrepresented people. The legal product made by judges is a decision or determination. A decision is a text filled with legal, social, and psychological considerations of what is submitted by justice seekers. Therefore, the judge's decision must at least meet three things, namely, it must be legal in the sense that it is in accordance with laws and regulations, fair, namely being able to realize goodness as the highest value of the law that is stated in the consideration of his decision, and can be scientifically accounted for, namely the decision is not only bound in its consideration to the text of the laws and regulations but in the application of the text the judge must state their reasons and views in applying the text of the article so that the decision becomes effective and can reflect the expected justice. In a hermeneutic perspective, a court decision is a process of proving the truth of the law from various points of view, both from the legal perspective, the local customary law perspective, the local community's cultural perspective, the social goal perspective, the co-textual perspective, the contextual perspective, and the defendant's psychological perspective. Therefore, it is not surprising that nowadays the hermeneutic perspective in the development of legal science is increasingly becoming an absolute requirement in legal interpretation and is starting to be used in judicial practice in Indonesia by a small number of judges.

Hermeneutics law is one of the interpretation activities of legal texts, legal events, legal facts, legal documents, legal manuscripts and doctrines expressed by experts. In addition to the interpretations that are always used in criminal and civil law such as grammatical interpretation, historical interpretation, systematic interpretation, theological interpretation, comparative interpretation, futuristic interpretation, restrictive interpretation, and extensive interpretation, legal hermeneutics can also be used in legal discovery. Hermeneutics in reality is not something special but the hermeneutic method only reconstructs all existing problems and after being deconstructed then reassembled to form a new unity so as to create the best solution in handling a case whose law can be said to be vague or unclear.

If most of the citizens are seen to obey the rules or laws, then the measure or quality of the effectiveness of the rules or laws can still be questioned. In other words, knowing the three types of obedience above, then it cannot simply use the measure of obedience to a rule or law as evidence of the effectiveness of a rule or legislation, at least there must also be a difference in the quality of the effectiveness of a rule or legislation. The more citizens who obey a law only with obedience that is in the form of compliance or identification, it means that the quality of the effectiveness of the rule or law is still low, conversely the more citizens who obey a rule or law with obedience that is in the form of internalization, the higher the quality of the effectiveness of the rule or law. That before the enactment of Law No. 35 of 2009 concerning Narcotics, Law No. 5 of 1997 and Law No. 22 of 1997 in it have been stated firmly and clearly the desire of the Government of the Republic of Indonesia to eradicate the circulation and use of narcotics and psychotropics that do not comply with medical standards.

There are at least three objectives of these two laws, namely:

1. The purpose of social engineering (tool of social engineering)
2. The purpose of law and order
3. The purpose of social order

These objectives are then outlined in the implementation mission: (Sujono AR., 2011) General Prevention, namely carrying out the necessary things to prevent the misuse of narcotics and psychotropics.

1. *Criminal Policy*, prevent narcotics and psychotropic drug crimes through law enforcement measures, both through penal and non-penal means.
2. *Social Rehabilitation*, undertake curative efforts for narcotics and psychotropic drug abusers who require medical treatment.
3. *Oversight Mechanism*, by supervising the circulation of narcotics and psychotropics.

Then to respond to the development of narcotics and illegal drugs problems that continue to increase and are serious, through the General Assembly of the MPR RI in 2002, it has recommended to the DPR RI and the President to make changes to Law No. 22 of 1997 concerning Narcotics, which then issued Law No. 35 of 2009 concerning Narcotics as an amendment to Law No. 22 of 1997. That the increasing level of narcotics crime is suspected to be caused by economic factors. The narcotics business has grown into one of the most profitable businesses and therefore narcotics crimes are always getting better.

The increasing rate of narcotics crime is also caused by Indonesia's geographical location between the continents of Australia and Asia and has a very long coastline. According to the report from the International Narcotics Control Strategy Report (INCSR), Indonesia's efforts to eradicate the illicit trafficking of narcotics are still inadequate. The indication is the increase in the number of narcotics abuse in the country and the rampant traffic of illicit narcotics trade from and to Indonesia involving other countries such as Thailand, Afghanistan, Nigeria and Singapore.

On October 12, 2009, Law No. 35 of 2009 concerning Narcotics was enacted, which carries a criminal threat of fines, imprisonment, life imprisonment and the death penalty. However, in reality, narcotics crimes show an increasing tendency. Starting from the description above, so that judges in deciding criminal cases, especially narcotics, are not only a legal process, namely only considering the applicable Laws and Regulations, the indictment of the Public Prosecutor, and the Defense of the Defendant's Legal Counsel or the Defendant's Defense accompanied by trial facts alone but also through a process that involves community behavior and can protect the community, there needs to be a change in the method of legal discovery carried out by judges through a legal hermeneutic approach as an effort to build a comprehensive legal interpretation so that legal construction is not trapped in the interpretation of the text alone but considers the relationship between text, context and contextualization so that the values of justice that are expected to appear in the judge's decision can be realized. **"Hermeneutics for Judges in Deciding Cases" Number: 66/Pid.Sus/2021/Pn. Brb."**

Restricting The Problem

The formulation of the problem is:

1. What is the basis for the Judge's considerations regarding Hermeneutics in deciding case Number: 66/Pid.Sus/2021/Pn.Brbb?
2. What is the legal force of the Judge's decision based on the Criminal Procedure Code regarding indicative evidence in case Number: 66/Pid.Sus/2021/Pn.Brbb?

METHOD

This research is a normative legal research. In normative legal research, law is conceptualized as what is written in laws and regulations (law in books) or law is associated as

conceptualized as a rule or norm that is a benchmark for behavior. In writing this thesis, the author chose to use several approaches that are relevant to the research problems faced, including the statute approach, historical approach, and case approach.

RESULTS AND DISCUSSION

Basis For The Judge's Considerations In Deciding Case Number: 66/Pid.Sus/2021/Pn/Brb

1) Philosophical Basis

The philosophy of the independence of judicial power is a power that is free from all forms of intervention both from within and from outside the judicial power, except on the basis of Pancasila and the 1945 Constitution of the Republic of Indonesia. The values of the Pancasila philosophy as the nation's outlook on life are the basic law and operational law for the existence of the independence of judicial power as a prerequisite for upholding the law and justice that is aspired to. The main objective of judicial power according to the 1945 Constitution of the Republic of Indonesia is in line with the objectives of the state contained in the Preamble to the 1945 Constitution of the Republic of Indonesia, paragraph four, one of which is to protect the entire Indonesian nation.

Philosophically, the application of legal hermeneutics by judges in deciding cases is based on several thoughts:

a) Legal Positivism Paradigm vs Progressive Law

There has been a shift from the rigid legal positivism paradigm to more flexible progressive legal thinking. Legal hermeneutics becomes a tool for judges to bridge the gap between written law and the need for justice in society.

b) John Rawls' Theory of Justice

John Rawls in "A Theory of Justice" emphasizes the importance of justice as fairness. Legal hermeneutics allows judges to interpret the law by considering broader principles of justice.

c) Philosophy of Natural Law

Natural law thinking, which emphasizes that law must be in harmony with universal moral and ethical values, encourages judges not only to rely on legal texts, but also to consider higher values of justice.

d) Philippe Nonet and Philip Selznick's Responsive Legal Theory

This theory emphasizes the importance of law that is responsive to social needs. Legal hermeneutics becomes a tool for judges to make the law more responsive to the demands of justice in society.

e) Hans Georg Gadamer's Hermeneutical Philosophy

Gadamer emphasizes the importance of "fusion of horizons" in interpretation, where the interpreter (in this case the judge) must consider the historical and cultural context of the legal text as well as the contemporary context in which the law is applied.

2) Sociological Basis

Constitutional judges at the Constitutional Court come from 3 (three) state institutions, namely the President, the DPR, and the Supreme Court. The procedures for selection, election, and submission of constitutional judges to the three state institutions are regulated internally by each submitting institution so that there are no guidelines or standards that are the same for the President, DPR, and Supreme Court to recruit constitutional judges. To ensure a transparent, accountable, participatory, and objective mechanism for nominating and selecting constitutional judges, a more comprehensive regulation is needed regarding the procedures for nominating and selecting constitutional judges in the Law. The position of constitutional judge is not a political position even though the proposing institution is a political institution.

3) Legal basis

In the context of Indonesian law, the legal basis for judges in applying legal hermeneutics can be found in several laws and regulations:

- a) 1945 Constitution
Article 24 paragraph (1) of the 1945 Constitution states that "Judicial power is an independent power to administer justice in order to uphold law and justice." This gives judges the authority to interpret the law in order to uphold justice.
- b) Law Number 48 of 2009 concerning Judicial Power
Article 5 paragraph (1) states that "Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society." This provision implicitly encourages judges to use hermeneutic methods in understanding and interpreting the law.
- c) Law Number 12 of 2011 concerning the Formation of Legislation
Article 5 letter f states that in forming legislation must be based on the principle of "clarity of formulation". However, in practice, there is often ambiguity in the formulation of the law that requires further interpretation by the judge.
- d) Civil Code (KUHPperdata)
Article 1342 of the Civil Code states that "If the words of an agreement are clear, it is not permissible to deviate from them by means of interpretation." A contrario, this implies that if the words are unclear, then interpretation is permitted.

In line with the development of the legal needs of society, there have been various Constitutional Court Decisions that have caused major changes to the Constitutional Court Law. Some of these Constitutional Court Decisions are:

- a) Constitutional Court Decision Number 066/PUU-II/2004;
- b) Constitutional Court Decision Number 49/PUU-IX/2011;
- c) Constitutional Court Decision Number 48/PUU-IX/2011;
- d) Constitutional Court Decision Number 34/PUU-X/2012; and
- e) Constitutional Court Decision Number 7/PUU-XI/2013.

In addition, the Constitutional Court Law has problems related to procedural law because its regulations are not yet complete in accordance with existing legal developments. Material related to procedural law is widely found in the Constitutional Court Regulations which are actually substantive and must be regulated in the Constitutional Court Law. Some of these Constitutional Court Regulations include:

- a) Constitutional Court Regulation Number 006/PMK/2005 concerning Guidelines for Proceedings in Judicial Review Cases;
- b) Constitutional Court Regulation Number 008/PMK/2006 concerning Guidelines for Proceedings in Disputes over the Constitutional Authority of State Institutions;
- c) Constitutional Court Regulation Number 15/PMK/2008 concerning Guidelines for Proceedings in Regional Head Election Results Disputes;
- d) Constitutional Court Regulation Number 16/PMK/2009 concerning Guidelines for Proceedings in Disputes over the Results of General Elections for Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council; and
- e) Constitutional Court Regulation Number 17/PMK/2009 concerning Guidelines for Proceedings in Disputes over the Results of the Presidential and Vice Presidential Elections.
- f) Based on these legal considerations, it is necessary to create a new Law on the Constitutional Court.

Legal Force of Judge's Decision Based on Criminal Procedure Code Regarding Evidence in Case Number: 66/Pid.Sus/2021/Pn.Brb

Narcotics on the one hand are drugs or materials that are useful in the field of medicine in a predetermined amount and approval from the Minister on the recommendation of the Head of the Food and Drug Supervisory Agency, while on the other hand they can cause very detrimental dependencies, especially to oneself or the body if misused. Normative legal research method, namely describing existing problems by reviewing them based on applicable legal theories or with written regulations (Laws). Narcotics crimes are divided into 2, namely crimes of drug abuse and crimes of drug dealers. The punishment between abusers and dealers will be different in terms of the threat of punishment, if the abuser will be given a light sentence. Dealers are threatened with severe punishment through the criminal justice system process. In this study, the author conducted a study on the Decision of the Barabai District Court Judge No. 66/Pid.Sus/2021/Pn.Brb, with the Defendant Abu (pseudonym) charged in the primary charge, namely violating Article 114 paragraph (1) of Law No. 35/2009 on methamphetamine narcotics. In overcoming drug abuse, consistent law enforcement is needed. The nature of law enforcement on drug abusers and dealers is also different as regulated in the provisions of applicable laws and regulations. Drug abuse is an unlawful act that can be committed by individuals (individual to individual) or groups (group to group, or to other individuals, or vice versa). The average reason for users is to seek peace, high curiosity or just want to try, to get pleasure, as an escape from problems, following trends and others. In addition to users, there are also drug dealers ranging from small to large scale. The sale and purchase of drugs can be done between friends, between regions, even between countries.

Narcotics on the one hand are drugs or materials that are useful in the field of treatment in a predetermined amount and approval from the Minister on the recommendation of the Head of the Food and Drug Supervisory Agency while on the other hand can cause dependence which is very detrimental especially to oneself or the body if misused. While the definition of abuse in Article 1 paragraph 15 of Law No. 35 of 2009 concerning Narcotics (hereinafter referred to as Law No. 35/2009 concerning Narcotics), "A drug abuser is a person who uses narcotics without rights or against the law." When someone has used narcotics, it is likely that person will become dependent on narcotics, Article 1 paragraph 14 of Law No. 35/2009 concerning Narcotics explains that:

"Drug addiction is a condition characterized by the urge to use narcotics continuously in increasing doses to produce the same effect and if use is reduced and/or stopped suddenly, it causes typical physical and psychological symptoms."

If someone has tested positive for using narcotics and indeed sells or uses narcotics in an unlawful manner, a criminal act can be carried out in the form of imprisonment or medical / social rehabilitation. Narcotics abuse is a form of mental disorder that is carried out in the form of behavioral deviations related to narcotics use. This disorder is often found in adolescents and young adults who often cause anxiety for parents, educators and the community. Because these narcotics often harm the physical and mental health of the perpetrator, family, community and state.

When viewed from the definition in Article 1 paragraph (1) of Law No. 35/2009 concerning Narcotics, "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."

Meanwhile, the definition of Article 1 paragraph (1) of Law No. 22 of 1997 concerning Narcotics, "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 or which are later determined by a decision of the Minister of Health". Bambang Gunawan stated the definition of narcotics, namely:

"Drugs that can be used in health sciences, but if misused, will cause very deadly diseases for users and cause very large losses." (Gunawan, 2016).

In terms of overcoming or preventing the increasing tendency with widespread victims, especially among children, adolescents, and adults, then firm action or regulations are needed that can be used to regulate such actions. Therefore, the enactment of the Law that regulates such actions, such as the objectives of Law No. 22/1997 concerning Narcotics, as follows:

- 1) Ensure the availability of narcotics for the benefit of health services and/or the return of scientific knowledge;
- 2) Prevent drug abuse; and
- 3) Eradicate the illicit trafficking of narcotics.

The basis for creating Law No. 35/2009 concerning Narcotics is to create a just and prosperous society by:

- 1) To improve the quality of Indonesian human resources in order to realize the welfare of the people, efforts are being made to improve medical treatment and health services, including by trying... availability certain types of narcotics needed as medicine and to prevent and eradicate the dangers of abuse and illicit trafficking of narcotics and narcotic precursors.
- 2) Integrate between the legal approach and the health approach which regulates efforts in the legal field and efforts in the health field in a balanced manner in dealing with drug abuse crimes.
- 3) Legally regulating the distribution of narcotics for the benefit of health, science and technology concerning all aspects of production, distribution and consumers is strictly and carefully regulated. If it conflicts with statutory regulations, it is a narcotics crime.
- 4) Encourage law enforcers to improve professionalism in carrying out their duties because narcotics trafficking is transnational in nature using high modus operandi, sophisticated technology supported by a wide organizational network and abuse is given rehabilitation punishment.

The punishment between abusers and dealers will be different, if abusers are given a light sentence, such as by being prevented, protected, saved and guaranteed medical rehabilitation and social rehabilitation efforts for abusers and addicts through the rehabilitation justice system. Dealers are threatened with severe punishment through the criminal justice system process with the threat of imprisonment of more than 5 years or even the death penalty. Law enforcement for drug abusers is different from the nature of law enforcement for dealers. Regarding the rehabilitation policy for drug abusers, it has not been implemented properly. As a result of the implementation of the law that deviates in enforcing narcotics law by law enforcers, it has become a new problem for the government, especially the Directorate General of the Ministry of Law and Human Rights, namely the overcapacity of prison inmates.

Prisons themselves are places where drug abusers and dealers gather, so it is not surprising that the drug business in prisons is increasingly rampant and is made worse by the presence of dealers. or drug dealers who can still control their business from inside prisons through the available internet facilities. In law enforcement in overcoming drug abuse, the Government has made a Law that regulates criminal sanctions that are differentiated based on the type of narcotics distributed or used. Criminal sanctions for drug abusers or distributors in Law No. 35/2009 concerning Narcotics are divided as follows:

- a) Category I: criminal sanctions are regulated in Articles 111 to 116 and Article 127 paragraph (1) letter a, in accordance with the provisions of each of these Articles.

- b) Category II: criminal sanctions are regulated in Articles 117 to 124 and Article 127 paragraph (1) letter b, the type of act and criminal sanctions are determined according to the provisions of each Article.
- c) Category III: criminal sanctions are regulated in Article 122 to Article 127 paragraph (1) letter c, criminal sanctions are regulated in each of these Articles.

Not only to regulate drug abusers or dealers, but Law 35/2009 concerning Narcotics, but also regulates:

- 1) Article 128 paragraph (1), parents or guardians of addicts who are under age and intentionally do not report will be subject to a maximum prison sentence of 6 months or a fine of IDR 1,000,000 (one million rupiah).
- 2) Article 129, for narcotics precursors, the minimum sentence is 4 years and the maximum sentence is 20 years with a fine of IDR 5 billion.
- 3) Article 130, as referred to in Articles 111 to 126 and Article 129, which are carried out by corporations, will be subject to imprisonment and fines for their managers and may be subject to additional penalties in the form of revocation of business or legal entity status.
- 4) Article 131, namely anyone who intentionally does not report the existence of a narcotics crime as referred to in Articles 111 to 126, Article 127 paragraph (1), Article 128 paragraph (1) and Article 129 shall be sentenced to 1 year in prison and a fine of IDR 500 million.
- 5) Article 133 paragraph (1) and paragraph (2), namely that a person who orders a minor to commit a crime will be punished with the death penalty or life imprisonment, a minimum of 5 years or a maximum of 20 years in prison with a fine of at least IDR 2 billion and a maximum of IDR 20 billion, and ordering the use of narcotics will be punished with a minimum of 5 years and a maximum of 15 years in prison with a fine of at least IDR 1 billion and a maximum of IDR 10 billion.
- 6) Article 134 paragraph (1) for drug addicts who are of age and intentionally do not report themselves will be punished with 6 months imprisonment and a fine of IDR 20 million, in paragraph (2) for families who intentionally do not report drug addicts will be given a criminal sanction of 3 months imprisonment and a fine of IDR 1,000,000 (one million rupiah).

Case Position Decision Number: 66/Pid.Sus/2021/PN.Brb

That, ES (name changed), Male, 37 Years Old, Muslim, private, Indonesian Nationality hereinafter referred to as Defendant ESbu, on Thursday, April 8, 2021 at 11.30 WIT residing in Haruyan Dayak Village RT.003, Hantakan District, Hulu Sungai Tengah Regency, precisely in Pondok, or still in the Barabai District Court area, without rights and against the law by offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over class I narcotics in the form of crystal methamphetamine, carried out by Defendant ES in the following manner Thursday, April 8, 2021, at 11.30 WIT bought 2 (two) packages of crystal methamphetamine for Rp. 200,000,- (two hundred thousand rupiah) and a package for Rp. 100,000,- (one hundred thousand rupiah) that the goods suspected of being crystal methamphetamine will be consumed by himself, usually if not consumed on the spot, will be consumed at home, according to ES's statement after being interrogated said that the last time he consumed it was on Thursday, April 8, 2021 at 11.15 WIT at a hut where Pani sold it to the defendant in Haruan Dayak Hantakan HST village, according to ES after being interrogated said that the intention and purpose of buying it was for his own consumption. Furthermore, Witness MF is a member of the HST Police Narcotics Investigation Unit (hereinafter referred to as the Barabai Police Narcotics Investigation Unit) who made an arrest and search of ES. On Thursday, April 8, 2021 at 11.30 in Haruyan Dayak Village RT.003 RW.001, Hantakan Hulu Sungai Tengah District, precisely in a hut at the time of the arrest, the witness together with Brigadier BY SH., along with the HST Police Narcotics Unit, the witness

explained that according to ES's statement, the crystal methamphetamine was obtained from Pani, after being interrogated, he said that every time he bought the crystal methamphetamine, it was for his own use or consumption, so far the person concerned has never resold it, but when consuming it, sometimes he can also invite other people, he admitted that it belonged to the Defendant ES, then the Defendant ES and the evidence were taken to the Barabai Police for further investigation.

Based on the examination of the Examination Report (hereinafter referred to as BAP) L, it is known that evidence. No. 13823/2018/NNF: 1 plastic bag containing white crystals weighing 0.056 grams and the remaining examination by the East Java Regional Police Labor officers weighing 0.036 grams after the examination was carried out, it was true that it was Methamphetamine crystals, registered in group I. Defendant Abu is threatened with imprisonment in accordance with Article 114 paragraph (1) of Law No. 35/2009 concerning Narcotics, subsidiary to Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning narcotics for the charges, Defendant ES stated that he understood and had no objections. The Public Prosecutor (hereinafter referred to as PU) presented 2 witnesses to be heard at the trial, and after hearing the witnesses' statements, Defendant ES confirmed all the statements presented at the trial.

1. Legal Considerations

The defendant ES (pseudonym) was charged in the primary indictment with violating Article 114 paragraph (1) of Law No. 35/2009 and Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning narcotics in the form of crystal methamphetamine, with the following elements:

- a) Everyone: because Defendant Abu is a legitimate Defendant, therefore this first element has been fulfilled and proven to be sufficient.
- b) Without rights or against the law: because the Defendant ES intentionally bought a package of narcotics in the form of crystal methamphetamine from Mr. Pani, the type of crystal methamphetamine weighing 1.37 grams. His actions were against the law because the Defendant ES was not a health worker, so this second element was proven legally.
- c) Offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, and handing over class I narcotics other than plants: based on the facts in this case, the Panel of Judges is of the opinion that this third element has been proven to be fulfilled.
- d) The defendant ES has been proven legally and convincingly guilty of committing a crime, so he must be sentenced to imprisonment and a fine that is fair and proportionate to his actions in accordance with the provisions of this decision.

2. Judge's Decision

Before imposing a sentence, it is necessary to consider the aggravating and mitigating factors for Defendant Abu as follows. Aggravating factors:

The actions of the Defendant ES are not in line with the activities of the Government which is currently actively eradicating all forms of drug abuse. Mitigating factors:

- 1) The defendant ES admitted his guilt and regretted his actions.
- 2) Defendant ES has never been convicted.

Considering Article 114 and Article 112 paragraph (1) of Law No. 35/2009 concerning Narcotics, the Panel of Judges found Defendant ES legally and convincingly guilty of committing the crime of "Without rights or against the law offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over class I narcotics in the form of crystal methamphetamine". By imposing a prison sentence of 7 years

and a fine of IDR 1 billion, if the fine is not paid it will be replaced with a prison sentence of 1 month. By determining the evidence in the form of:

- 1) One plastic clip containing crystal methamphetamine weighing 0.37 grams, remaining 0.37 grams from the forensic lab, 2 bundles of plastic methamphetamine clips;
- 2) Meth smoking device.
- 3) With this, the evidence was confiscated and destroyed.

3. Analysis of the Panel of Judges' Decision

After reading and carefully examining the above decision, the Defendant ES was proven guilty of committing the act of abusing narcotics in the form of crystal methamphetamine based on the facts in this case:

- 1) The defendant ES was proven legally and convincingly guilty of committing the act of abusing narcotics in the form of crystal methamphetamine.
- 2) With evidence of 2 clips containing crystal methamphetamine weighing 0.37 grams, remaining 0.37 grams from the forensic lab, 2 bundles of plastic clips of methamphetamine and a methamphetamine smoking device.

Based on the above decision, the Panel of Judges may have obstacles in deciding on a prison sentence for the Defendant Abu, according to the author the obstacles are as follows:

- 1) The defendant ES is the sole breadwinner in his family for his wife, children and even his parents.
- 2) The defendant ES committed this act due to economic pressure, namely to meet the family's needs even though it was done in the wrong way.
- 3) Defendant ES uses crystal methamphetamine because he wants to relieve excessive depression.

In this case, I fully understand and agree with all the considerations of the Panel of Judges of the Barabai District Court in deciding on a prison sentence of 6 years and 6 months and a fine of Rp1 billion if the fine is not paid then it will be replaced with a prison sentence of 1 month with the detention period being reduced from the sentence that has been imposed on the Defendant ES because it has been proven legally and convincingly guilty of having bought and used narcotics in the form of crystal methamphetamine without the right to another person and without permission from the authorities. It is hoped that the above decision can make the Defendant ES deterred from abusing narcotics, can become a better person, realize what he has done is wrong and can harm himself and even others and can avoid abusing narcotics again.

Based on the discussion above, the judge's consideration in imposing imprisonment and fines on defendants in narcotics crime cases is based on legal and non-legal considerations by looking at circumstances that can be classified as public prosecutor's indictment, criminal charges, witness statements, defendant's statements, and evidence, while non-legal ones are such as the background of the act and mitigating and aggravating factors for the defendant. The imposition of imprisonment and fines by the judge on defendants in narcotics crime cases is in accordance with the objectives of the Narcotics Law, which is to prevent, protect and save the Indonesian nation from narcotics abuse and also to eradicate illicit trafficking of narcotics.

In the concept of hermeneutics of the judge's decision on Decision Number: 66/Pid.Sus/2021/PN.Br. The theory used by the judge in imposing a fine and imprisonment on the defendant in a narcotics crime case is to use the absolute theory. Because narcotics crimes have a very large impact and it concerns the nation's generation, and also the perpetrators do not necessarily feel deterred or realize their actions due to the absence of an appropriate or equivalent sentence. Where the absolute theory is divided into 2 theories, namely pure and impure absolute theories. Here the imposition of the death penalty by the judge in the decision being studied uses the pure absolute theory. Because the imposition of imprisonment and fines

can be said to be criminal sanctions that are commensurate with the guilt of the perpetrator of the narcotics crime, which is included in the pure absolute theory.

CONCLUSION

Hermeneutical Basis in Judge's Decision, in case Number 66/Pid.Sus/2021/Pn.Brb, the Judge considered that the defendant's actions were considered to violate Article 114 paragraph (1) of Law Number 35/2009 concerning Narcotics, subsidiary Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning narcotics. In criminal cases such as Number 66/Pid.Sus/2021/Pn.Brb, judges are faced with the challenge of interpreting various elements, ranging from trial facts, applicable legal regulations, to relevant socio-cultural contexts. Basis for the Existence of Hermeneutics for Judges in Deciding Case Number: 66/Pid.Sus/2021/Pn.Brb

Some of the bases underlying the use of hermeneutics in case Number 66/Pid.Sus/2021/Pn.Brb include:

- 1) Complexity of Legal Facts: Each criminal case has unique characteristics and different complexities of facts. Hermeneutics allows judges to explore the meaning behind these facts, see their relationship to legal norms, and understand the social context behind them.
- 2) Limitations of Legal Text: Laws are often general and abstract. Hermeneutics helps judges bridge the gap between general legal rules and the concrete cases they face. Societal Development: Society continues to develop and social values change. Hermeneutics allows judges to consider societal developments in interpreting the law, so that the resulting decisions remain relevant to the times.
- 3) Plurality of Interpretations: Law is not an exact science. There is the possibility of various interpretations of a legal rule. Hermeneutics encourages judges to make critical and rational interpretations, by considering various points of view.

Legal Force of the Judge's Decision Based on Hermeneutics in Case Number: 66/Pid.Sus/2021/Pn.Brb. The legal force of a decision based on hermeneutics lies in its ability to provide fair justice and fulfill the sense of justice of the community. However, there are several aspects that need to be considered:

- 1) Subjectivity of Judges: Hermeneutics involves the element of judge subjectivity in interpreting facts and laws. This has the potential to cause differences of opinion and legal uncertainty.
- 2) Standard of Proof: The judge's decision must be supported by strong evidence. Hermeneutics should not be used as a tool to ignore the applicable standards of proof.
- 3) Transparency Reasons: Judges are required to provide clear and logical reasons for their decisions. Transparency of reasons will increase public trust in court decisions.
- 4) Supervision Level: Court decisions can be appealed or cassated. This oversight process serves to ensure that the resulting decision is in accordance with the law and justice.

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