



Judges' Considerations in Sentencing a Prison Under Special Minimum Criminal Threats in the Solok District Court (Case Study of Decision Number 40 / Pid.Sus / 2014 / Pn. Slk)

Okta Zulfitri; Elwi Danil; Fadillah Sabri

Faculty of Law, University of Andalas, Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i6.1735>

Abstract

Base on the data from Indonesian Narcotic National Body and Indonesian National Police the number of confiscate Narcotic and Narcotics criminal offender continue to increase every year. To realize national purpose of Indonesian to protection all Indonesian people, especially from dangerous of Narcotic, Indonesian Government and Representation House of Indonesian has issued some law of Narcotics Dealer in Indonesian, the last law Narcotics Dealer in Indonesia that has issued is Narcotics Dealer Act Number 35 year 2009. One of the new concept in this Narcotics Dealer Act Number 35 year 2009 is specific minimal criminal sanctions that regulated in article 111 to article 126. But the fact, in Indonesian's court practice, Judge's decision was did not always obeying the limit of specific minimal criminal sanctions. One of the Court Judgement that were did not obeying the limit of specific minimal criminal sanctions in Narcotics criminal case as defendant of Agusrini in Judge's decision number 40 / Pid.Sus / 2014 / PN.SLK at July 17 2014 in District Court of Solok, meanwhile in District Court of Solok another Narcotic criminal case Judge's decision in were obeying the limit of specific minimal criminal sanctions. This situation makes uncertainty of the law. Base on the legal problems, by using normative approach in case approach, this research tries to analyze the proof of Narcotics criminal case is defendant of Agusrini in District Court of Solok, and the the judge's consideration imprisonment under specific minimal criminal sanctions of article 111 section 1 Act Number 35 year 2009 by applied criminal law theory and other related law theory. The conclusions as the result of this research are: The proof of Narcotics criminal case is defendant of Agusrini in District Court of Solok has fulfilled threshold proof in Indonesian procedure of criminal (Negatief Wettelijk); and the judge's consideration in Court Judgment on Narcotics criminal case as defendant of Agusrini in District Court of Solok imprisonment under specific minimal criminal sanctions of article 111 section 1 Act Number 35 year 2009 has applied judges independent theory that connected to theory of justice and theory of punishment.

Keywords: *Specific Minimal Criminal Sanctions; Judge's Decision*

Introduction

One of the legal problems faced by the Indonesian people, which damages the younger generation is the abuse of Narcotics. Based on data from the National Narcotics Agency, the number of confiscated evidence of Narcotics and Drugs / hazardous substances (Narcotics) in the early semester of 2018 increased from 2017. In January to June 2018, the National Narcotics Agency had confiscated around 1.3 tons of methamphetamine narcotics, 31 kg of cannabis narcotics, and 217,526 items of ecstasy pills. While in 2017 the National Narcotics Agency has confiscated 1.1 Tons of methamphetamine narcotics, 858.6 kg of marijuana, and 218,212 items of Ecotropic pills. The data was delivered by Heru Winarko during the commemoration of the International Anti Narcotics Day at the Rehabilitation Center for the National Narcotics Agency, Lido Bogor, West Java.¹

According to data from the National Narcotics Agency 24% of drug users are students, of that number 50 million are elementary school students up to high school students, and 35 million are students.² Meanwhile data from the Indonesian Child Protection Commission notes that 87 million Indonesian children as many as 5.9 million are registered as drug addicts, this was conveyed by the Commissioner for Health of the Indonesian Child Protection Commission, Siti Hikmawaty, at a press conference at the Indonesian Child Protection Commission Building, Menteng, Central Jakarta, Tuesday 3 March 2018.³

Meanwhile the number of narcotics crime cases in 2018 as conveyed by National Police Chief General Tito Karnavian involved 49,079 people, this number decreased by 22% compared to 2017 with figures involving 63,108 people. However, although the number of perpetrators as suspects has decreased, the cases handled in 2018 have increased from 36,428 cases in 2017 to 38,316 cases in 2018.⁴

In achieving the goal of the State to protect the entire Indonesian nation, especially from the dangers of Narcotics, The government and the House of Representatives have issued several laws for the eradication of Narcotics Crimes. Laws that have been issued by the Government and the Parliament on Narcotics Eradication consist of Law Number 9 of 1976 concerning Narcotics (hereinafter abbreviated to Law No. 9 of 1976), Law Number. 22 of 1997 concerning Narcotics (hereinafter abbreviated as Law No. 22 of 1997) and finally Law No. 35 of 2009 concerning Narcotics (hereinafter abbreviated as Law No. 35 of 2009). Even before Merdeka Indonesia had rules governing Narcotics, namely the Ordinance of Drugs (Verdoovende Middelen Ordonnantie Staatblad Number 278 Jo. 536 of 1927), This Ordinance was later replaced by Law No. 9 of 1976.⁵

One reason for the issuance of Law No. 35 of 2009 as described in the general explanation of Law No. 35 of 2009 alinia three namely:

"Law Number 22 Year 1997 concerning Narcotics regulates efforts to eradicate Narcotics crime through the threat of fines, imprisonment, life imprisonment, and capital punishment. In addition, Law No. 22/1997 also regulates the use of Narcotics for medical and health purposes and regulates medical and social rehabilitation. However, in reality Narcotics crime in society shows an increasing tendency both quantitatively and

¹ "Narcotics Increases", from <http://www.kompas.com> July 13, 2018.

² "BNN Said 24 Percent of Drug Users Are Students, this is the Ministry of Education and Culture's Response", from <http://www.tribun.com> August 14, 2018.

³ "5.9 Million Indonesian Children Become Drug Addicts", from <https://news.okezone.com> Tuesday March 06 2018.

⁴ "Sahroni of the House of Representatives: Eradication of Drugs and Terrorism Raise the National Police's Image in 2018", from <https://www.liputan6.com> 01 Jan 2019.

⁵ Dani Krisnawati, 2006, Special Criminal Law, Pena, Jakarta, page. 82

qualitatively with widespread victims, especially among children, adolescents, and young people in general".⁶

Based on the explanation of Law No. 35 of 2009 above it is clear that although there have been severe criminal sanctions against narcotics offenders, but the fact is Narcotics Crimes shows an increasing tendency both quantitatively and qualitatively, so it is necessary to make changes to Law No. 22 of 1997 or the issuance of a new Law replaces Law No. 22 of 1997.

There are new legal developments in Law No. 35 of 2009 related to the imposition of criminal sanctions on narcotics offenders. In Law No. 35 of 2009 still regulates the threat of a criminal twenty years in prison, life imprisonment and capital punishment, in Act 35 of 2009 also regulates the existence of special minimum penalties as well as the regulation of criminal sanctions relating to Narcotics precursors or materials for making Narcotics. Criminal offense follows the group, type, size and number of Narcotics.

Specific minimum penalties regulated in Law No. 35 of 2009 for both types of imprisonment and fines, this matter as regulated in Article 111 to Article 126 of Law No. 35 of 2009. The minimum criminal provisions provided for in Article 111 through Article 126 of Law No. 35 of 2009 includes delik qualifications as people who master or possess, seller or offering or buyer, the person who distributes or the person who imports or the person who transits, people producing Narcotics of Group I, Narcotics of Class II or Narcotics of Class III, whether in the form of plants or synthetics, including Narcotics Precursor. The minimum criminal code stipulated in each offense qualification is between 2 (two) years and 6 (six) years.

The special minimum criminal system (*minimum straf rules*) in Law No. 35 of 2009 is different from the criminal system regulated in the Criminal Code which uses the maximum criminal system. In the Criminal Code, which is in Article 12 paragraph (2) as well as in articles related to imprisonment and confinement expressly stipulates that the minimum imprisonment and confinement is at least 1 (one) day. However Article 103 of the Criminal Law Code has provided space for the form of regulation of the criminal system in Laws other than the Criminal Code Book to regulate the principles of general provisions that are different from Book I of the Criminal Code Book.

The special minimum criminal system (*straf minimum rules*) has provided limits to judges in issuing decisions against perpetrators of criminal acts. So with the enactment of this minimum criminal system in Law No. 35 of 2009, then the Judge in imposing a criminal act against a Narcotics offender who violates or fulfills the offense formula in Article 111 to Article 126 of Law No. 35 of 2009 must not be under a minimum criminal sentence.

But the fact is, in trying and deciding Narcotics criminal cases, especially related to imprisonment, the Judge does not always decide in accordance with or above the minimum sentence as regulated in Law No. 35 of 2009. Specifically for the Solok District Court, one of them can be seen in Narcotics criminal cases in the form of marijuana plants in the name of the defendant Agusri summons Rini.

That the defendant Agusri Call Rini had received the deposit of type of marijuana which was wrapped in newspaper from a person named Dori Randiko on Saturday, April 26, 2014 at around 1:00 PM at his home located in Jalan Marahadin No. 681 Neighborhood Association. 02 Pillars of Citizens. 05 Kampung Jawa Village, Tanjung Harapan Subdistrict, Solok City Solok to be handed over to the defendant's husband Agusri summons Rini namely Gusrianto Summon Ampo who was currently

⁶ Explanation of Law Number 35 Year 2009 Regarding Narcotics.

servicing a sentence at Solok Class II B Penitentiary.⁷ The next day around 11:00 PM the defendant Agusrini summons Rini to the Class II B Penitentiary Solok and Narcotics type of marijuana by the defendant Agusrini Call Rini keep it in his wallet. When going through the reception procedure at the Solok Class II B Penitentiary, that is when an examination was made on Agusrini Call Rini and her luggage found Narcotics type of cannabis wrapped in newspaper in the wallet brought by the defendant Agusrini Call Rini. Based on these findings Agusrini calls Rini to be handed over to the Police Officers of the Solok City Police Narcotics Investigation Unit for the process of investigating and investigating the possession of these types of cannabis Narcotics.⁸ The weight of the type of cannabis Narcotics brought by Agusrini calls Rini to the Solok Class II B Penitentiary, based on the official report of the weighing results from PT. Pegadaian (company) Solok Branch Number.263 / LL.184200 / 2014 dated 28 April 2014 weighing 2 , 75 (two point seventy five) grams. In the process of investigating Agusrini, Rini Call also conducted a urine examination, and apparently based on the results of the Agusrini Urine Check from the Solok Regional General Hospital No. 596 / TU-RS / SK / IV / 2014 dated 26 April 2014 signed by dr.Soufni Morawati, Sp.PK stated that urine Agusrini calls Rini containing Tetrahydrocannabinol Positive.⁹

In accordance with the Public Prosecutor's Indictment at the Solok District Attorney NO.REG. PERKARA: PDM-79 / SLK / 06/2014 has charged Agusrini Call Rini with an alternative form of indictment, namely: The First Indictment violates Article 111 paragraph (1) of Law No. 35 of 2009 concerning Narcotics or Second Indictment violates Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Narcotics.

Result and Discussion

In the practice of Indonesian criminal justice, based on the Judge's interpretation of the application of the provisions of the special minimum criminal threat there are various reasons / considerations the Judge drops the criminal under the special minimum criminal threat. These reasons can be divided into general categories and special categories, that is :¹⁰

1. General Category
 - a. The level / weight of the defendant's mistakes is relatively small;
 - b. The motive and purpose of the defendant commits a crime (whether planned / structured or not);
 - c. Viewed from the inner attitude of the accused (*morale hazard*);
 - d. Defendant's attitude and actions after committing a crime;
 - e. The impact or effect of the actions taken by the perpetrators on the victim;
 - f. Is it true that there is peace between the perpetrator / defendant and the victim (including whether the perpetrator has provided compensation to the victim);
 - g. The size of the loss caused by the perpetrators / defendants.
2. Special Category:

Special categories that are presented here only, limited to specific categories for Narcotics crime, namely:

 - a. The amount of evidence possessed by the defendant at the time of the crime was relatively small / classified as small, less than 1 gram;

⁷ Indictment of Public Prosecutor's at Solok District Attorney NO. REG. PERKARA: PDM-79 / SLK / 06/2014 On behalf of Defendant Agusrini Call Rini

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Supandriyo, 2019, Principle of Freedom of Judges in Criminal Comprehensive Study of Crimes with Special Minimum Threats, Meaning of Bumi Intaran, Yogyakarta, pages. 245-246.

- b. The defendant's motives and objectives at the time of possession / possession of Narcotics are only for own use and not for sale.

Of the various reasons or considerations above, it is the Judge's assessment of the criminal act committed by the defendant outside the consideration of fulfilling the elements of the offense charged, but rather an assessment of the reasons / objectives of the defendant committing a crime, the inner attitude of the defendant when and after committing a crime, due to criminal acts / losses incurred, and the amount / quantity of evidence. So from the facts of the practice of criminal justice in Indonesia it is clear that what influences the dropping of the Judges' decisions in addition to the juridical elements of laws and regulations relating to criminal acts charged to the defendant, but also matters outside the juridical element namely the reason / purpose of the defendant committing a crime, the inner attitude of the defendant when and after committing a crime, due to a crime / loss incurred, and the amount / quantity of evidence.

In the case that was made as a case study in this study, namely the decision of the Narcotics crime case on behalf of Agusrini summons Rini, both in the Solok District Court decision No. 40 / Pid.Sus / 2014 / Pn. On July 17, 2014, Decision of the Padang High Court in Decision No. 136 / PID / 2014 / PT.PDG on September 8, 2014, and Supreme Court Decree No. 1910 K / PID.SUS / 2014 dated February 10, 2015, in consideration of dropping the criminal under the minimum criminal threat in Article 111 paragraph (1) of Law No. 35 of 2009 to the defendant Agusrini Call Rini basically as follows:

1. Defendant Agusrini Call Rini is pregnant
2. Punishing the defendant Agusrini Call Rini as well as punishing the child in her womb;
3. The weight of Narcotics of cannabis controlled by the defendant AgusRini Call Rini is only 2.75 (two point to five) Gram;
4. Defendant Agusrini Call Rini is not a Narcotics kingpin.
5. Judges are not just mouthpieces of the law but more importantly the task of judges is to explore and uphold justice;

Considerations by the Panel of Judges of the Solok District Court, the Padang High Court, and the Supreme Court Judge who examined them and adjudicate the case of the defendant Agusrini. Rini's summons above are the same as the various considerations used by judges in the Indonesian criminal justice practice when making decisions under minimal criminal threats, namely considering the purpose of the defendant Agusrini Call Rini to commit a crime, the inner attitude of the defendant Agusrini Call Rini during and after the crime, the amount of evidence, the physical condition of the defendant Agusrini Call Rini who was pregnant and added the theoretical reasons of the judge not only as a mouthpiece of the Act but also as an enforcer of justice.

The law is very closely related to justice, even there is an opinion that the law must be combined with justice, so it really means law, because indeed the purpose of the law is the achievement of a sense of justice in society.¹¹ Regarding the relationship between law and justice, Plato believes that law is an instrument to bring justice in the midst of situations of injustice.¹²

While the essence of justice according to Han Kelsen is in accordance with the norms that live and develop in society, which are not only legal norms, but also religious norms, decency, and others, where the norm's goal is not only to achieve individual happiness, but the happiness of all humans.¹³ Han Kelsen's opinion about the essence of justice is in line with the notion of substantive justice, as opposed to

¹¹ H.M. Agus Santoso, 2012, *Moral Law and Justice*, Kencana, Jakarta, page. 91.

¹² Bernard L. Tanya, 2006, *Legal Theory of Orderly Human Strategy across Spaces and Generations*, Commanditaire Vennootschap Kita, Surabaya, page. 35.

¹³ H. Salim HS, 2014, *Application of Legal Theory in Dissertation and Thesis Research*, Rajawali Press, Jakarta, page. 76.

procedural justice. Procedural justice is justice based on the provisions formulated by formal legal regulations. While substantial justice is justice based on values that are born from responsive legal sources according to conscience.¹⁴

In the Narcotics crime case in the name of Agusrini, Rini's Call aside from the legal fact that he had been caught in possession of Type I Narcotics in marijuana in Class II B Penitentiary, Solok as entrusted by someone named Dori Randiko for the defendant's husband named Gusrianto Call Ampo, there are also facts outside the legal facts which ultimately affect the verdict of the Solok District Court Judge, the Judge of the Padang High Court which is upheld by the Supreme Court Judge, namely the defendant who is pregnant, the amount of evidence deemed not much by the Panel of Judges, and the defendant is not a kingpin or who makes Narcotics criminal acts as his profession.

The Solok District Court Judge in his consideration stated that the condition of the defendant Agusrini Call Rini who was pregnant in accordance with the minimum criminal threat in Article 111 paragraph (1) of Law No. 35 of 2009, namely a minimum imprisonment of 4 (four) years to disturb their sense of justice, the consideration was taken over by the Judge of the Padang High Court, while the Supreme Court Judge said punishing the defendant Agusrini. Calling Rini who was pregnant as well as punishing the child in her womb, so that it is fair and is an exception to be deviated from the minimum criminal limit in the provisions of Article 111 paragraph (1) of Law No. 35 of 2009. So theoretically in his consideration both the Solok District Court Judge, the High Court Judge, and the Supreme Court Judge have done:

1. Strive to achieve substantive justice rather than procedural justice or balance substantial justice with procedural justice;
2. Trying to carry out its functions not only as a mouthpiece of the law but also as a mouthpiece of justice;
3. Try to reach the essence of justice to explore the value of justice from the norms that live and develop in society, which are not only legal norms, but also religious, moral, and other norms;

Against the facts of the Narcotics conviction on behalf of Agusrini Call Rini above, can be in line with the theory put forward by Gustav Radbruch when there is a conflict between legal certainty with justice, or legal certainty with expediency, it must be used the basis or principle of priority, where the main priority always falls on the value of justice, only the value of expediency and finally legal certainty.¹⁵ Gustav Radbruch's theory above is supported by Harifin A Tumpa, who said that in principle the judge is obliged to implement the provisions stipulated in the Act including minimal criminal provisions, but that principle does not apply rigidly, certainly a judge is not only a mouthpiece of the Act but must also consider the sense of community justice.¹⁶

In addition to theoretical foundation, Judges in carrying out their duties have functional independence / existential freedom, with its independence / freedom, the Judges not only become the mouthpiece of the Law but also become the fulfillment of a sense of justice in a society that is substantial. Then another theoretical basis that can be used to analyze the Judges' judgment of imposing a criminal under the specific minimum criminal threat Article 111 paragraph (1) of Law No. 35 of 2019 in the Narcotics criminal case verdict on behalf of the defendant Agusrini Call Rini is the teaching of the theory of conviction.

¹⁴ Bambang Sutiyo, 2003, Justice Reform and Law Enforcement in Indonesia, Indonesian Islamic University Pres, Yogyakarta. pages. 7-9.

¹⁵ Supandriyo, 2019, Principle of Freedom of Judges in Criminal Comprehensive Study of Crimes with Special Minimum Threats, Meaning of Bumi Intaran, Yogyakarta, page. 57.

¹⁶ Anggi Prayurisman, 2011, Application of Criminal Sanctions Under Special Minimum Threats in Corruption Cases, Postgraduate Thesis of Andalas University, Padang, pages. 29-30.

In criminal theory there are three theories of punishment, namely the theory of retaliation (obsolut theory), goal theory (relative theory, improvement theory), and combined theory (*vereeniging theory*). The theory of retaliation (absolute theory) whose principal teachings see the criminal as a retaliation to the perpetrators, without regard to the criminal consequences for the perpetrators.¹⁷ Objective theory (relative theory, improvement theory) whose principal teachings justify punishment based on or dependent on the purpose of punishment, namely for the protection of the community or prevention of criminal offenses.¹⁸ Whereas the combined theory (*vereeniging theory*) is a combination of retaliation (obsolut theory), goal theory (relative theory, improvement theory), the principal teachings in punishment are not just considering the past as contained in the theory of retaliation, but must also simultaneously consider the future as in goal theory.¹⁹ Thus the conviction of a criminal must provide a sense of satisfaction, both for the judge and the criminal himself in addition to the community.²⁰

Based on the combined sentencing theory (*vereeniging theory*), it is clear that the purpose of punishment in addition to considering the past, that is criminal acts committed by the perpetrators, but also view the future that is the result for the perpetrators, so that it is hoped that criminal punishment not only fulfills a sense of justice for the community, but on the other hand it must also fulfill a sense of justice for judges who impose a crime, and fulfill a sense of justice for the perpetrators themselves. So if this combined criminal theory is connected with the Judge's consideration in the case decision on behalf of Defendant Agusrini summons Rini, that impose a crime under a special minimum criminal threat Article 111 paragraph (1) of Law no. 35 of 2009 by considering the condition of the defendant Agusrini Call Rini who was pregnant, which also means punishing children in the womb, so that according to a sense of justice the Judge would be unfair if the defendant Agusrini summons Rini to be convicted in accordance with the specific minimum criminal threat Article 111 paragraph (1) of Law No. 35 of 2009, then the Solok District Court Judge, the Padang High Court, and the Supreme Court Judge have applied the combined theory in the conviction of the defendant Agusrini summons Rini.

Therefore, based on the description above, the Panel of Judges' consideration in the decision of the Solok District Court No. 40 / Pid.Sus / 2014 / Pn. On July 17, 2014, Decision of the Padang High Court in Decision No. 136 / PID / 2014 / PT.PDG on September 8, 2014, and Supreme Court Decree No. 1910 K / PID. SUS / 2014 dated February 10, 2015 which handed down the criminal under minimal criminal threats to the defendant Agusrini Call is appropriate when reviewed theoretically, namely the theory of independence or freedom of the Judge which is connected with the theory of criminal purpose and the theory of justice. Besides that, on the other hand, normatively, in accordance with the Law on Judicial Authority, it is also justified because the Judge is obliged to explore, follow, and understand the legal values and sense of justice that lives in the community.

Before analyzing the Judges' considerations in the Narcotics criminal case verdict on behalf of the defendant Agusrini Call Rini, which became the argumentative basis for criminal prosecution under the special minimum criminal threat limit in Article 111 paragraph (1) of Law No. 35 of 2009, then the decision will be compared with the decision of a similar case with the weight of the case being equal in the Solok District Court. So that it will be seen a fundamental difference in the consideration of judges in the decision of Narcotics crime cases on behalf of the defendant Agusrini Call Rini with other cases or with cases that are compared.

Decision on a similar case which will be compared with a decision on a Narcotics crime on behalf of the defendant Agusrini. Calling Rini to the Solok District Court is a Narcotics crime case in the name of the defendant Marni Putri Susanti. Calling Marni et al who has been terminated or convicted with a

¹⁷ E.Y Kanter and S.R.Sianturi, 2002, Principles of Indonesian Criminal Law and Its Application, Styria Garfika. page. 59.

¹⁸ Ibid, page. 61.

¹⁹ Ibid, page. 63.

²⁰ Ibid

body crime equal to the specific minimum criminal in Article 111 paragraph (1) of Law No. 35 of 2009, that is imprisonment for 4 (four) years each. Whereas the reason the author uses a criminal case on behalf of the defendant Marni Putri Susanti Call Marni And friends is because:

1. The case was decided with the same offense qualification that was proven to violate Article 111 paragraph (1) of Law No. 35 of 2009 or as a person who controls Narcotics plant species;
2. Defendants of the same gender, namely women;
3. Evidence of the same type, namely Narcotics types of dried cannabis leaves;
4. Defendant Agusrini Call Rini and the defendant Marni Putri Susanti Call Marni are both as a wife;
5. Defendant Agusrini Call Rini and defendant Marni Putri Susanti Call Marni are both as a mother, where the defendant Agusrini calls Rini in a state of pregnancy, while the defendant Marni Putri Susanti calls Marni already has 5 (five) young children;
6. Defendant Agusrini Call Rini and defendant Marni Putri Susanti Call Marni together committed Narcotics with her spouse / husband, the difference is that the defendant Marni Putri Susanti calls Marni to be caught with her husband, while the defendant Agusrini summons Rini himself to be caught as an intermediary or delivery courier or a person who submits cannabis narcotics for her husband who is undergoing a crime in the Class II Penitentiary Solok;
7. The facts of the actions of the defendant AgusRini Call Rini with the facts of the actions of the defendant Marni Putri Susanti Call Marni have an equivalent quality, namely:
 - a. Defendant Agusrini Call Rini has become an intermediary or delivery courier or the person who submitted the type of cannabis Narcotics as regulated in Article 114 paragraph (1) of Law No. 35 of 2009 but has not yet been carried out and is still in its possession so that it was indicted and proven to violate Article 111 paragraph (1) of Law No. 35 of 2009;
 - b. Defendant Marni Putri Susanti Call Marni and her husband have 4 (four) small cannabis narcotics packages wrapped in clear plastic so that there are clues to the type of cannabis Narcotics besides the defendant will use the defendant himself, the defendant will sell as stipulated in Article 114 paragraph (1) of Law No. 35 of 2009 but has not yet been completed and is still in its possession so that it was also indicted and proven to violate Article 111 paragraph (1) of Law No. 35 of 2009.
8. The difference in the weight of evidence is not too far, namely 4.97 (four point ninety seven) Gram, while the number of evidence of cases in the name of the accused Agusrini Call Rini is 2.75 (two point seventy five) Gram.

Although in the Narcotics crime case on behalf of the defendant Marni Putri Susanti there were other perpetrators, namely the defendant's husband, so that the indictment article which is proven to be disputed with Article 132 paragraph (1) of Law No. 35 of 2009 concerning conspiracy to replace evil or the form of *lex specialis* of Article 55 paragraph (1) of the 1st Book of the Criminal Law Act as the conductor, order to commit or participate in committing a crime, but the application of Article 132 paragraph (1) of Law No. 35 of 2009 is not as a weighting reason for the article suspicion / indictment, so that from the point of view the weight of the case remains the equivalent of the Narcotics crime case on behalf of the accused Agusrini Call Rini.

The case of the Narcotics crime position on behalf of the defendant Marni Putri Susanti Call Marni and friends, basically as follows:²¹

"That on Tuesday, April 30, 2019, at approximately 00:30 AM the defendant MARNI DAUGHTER SUSANTI called MARNI with her husband, SEPRIANDA. Call for RIAN was arrested by Police Officers from Solok City Resort located in their home located on Jl. Telaga Biruhun, RT 001, RW 003, Simpang Rumbio Urban Village, Lubuk Sikarah District, Solok City because based on public information there was a Narcotics transaction at that

²¹ Indictment Letter No. Reg.Kara: PDM - 42 / L.3.15/Ep.3/06/2019 on June 24, 2019.

location, during a search in the bedroom the defendants found 4 (four) types of cannabis Narcotics packages wrapped in clear plastic stored in a red wallet. Net weight of 4 (four) types of Narcotics packages of cannabis wrapped in clear plastic based on the Minutes of Weighing Results from the Trade and Cooperative Office of Small and Medium Enterprises Regional Technical Implementation Unit of the Legal Metrology of the Solok City Government Number: 510/243 / DPKUKM / IV-2019 dated April 8, 2019 with a total weight of cannabis Narcotics weighing 4.97 (four commas ninety seven) Gram, and based on Laboratory Test Results from the Central Drug and Food Control Agency in Padang Number: 19,083.99.20.05.0296 K dated May 9, 2019 some of the evidence as much as 0.40 (zero point forty) Gram sent to the Center for Drug and Food Inspection in Padang is positive Marijuana (Cannabis.sp) including Narcotics Group I and listed Number 8 in the attachment to Law Number 35 Year 2009 about Narcotics. After having a urine test based on the Certificate of Results of Urine / Drug Check No. 655 / TU-RS / SK / IV / 2019 dated 30 April 2019 for the defendant Marni Putri Susanti Calling Marni and Certificate of Urine / Narcotics Examination Results No. 656 / TU-RS / SK / IV / 2019 dated April 30, 2019 for her husband Seprianda Call Rian from Mohammad Natsir Regional General Hospital found that the defendant's urine and her husband were positive for Tetrahydrocannabinol (Cannabis). "

Based on the case of the position, the defendant on behalf of Marni Putri Susanti Call Marni et al was indicted by the Public Prosecutor with an alternative form of indictment as stated in Indictment Letter No. Reg.Kara: PDM - 42 / L.3.15/Ep.3/06/2019 dated June 24, 2019, namely:

- First : Article 132 paragraph (1) Jo Article 114 paragraph (1) of Law No. 35 of 2009 concerning Narcotics
Or
Second : Article 132 paragraph (1) Jo Article 111 paragraph (1) of Law No. 35 of 2009 concerning Narcotics.
Or
Third : Article 132 paragraph (1) Jo Article 127 paragraph (1) letter a of Law no. 35 of 2009 concerning Narcotics.

The First and Second Indictments The Public Prosecutor uses Article Law No. 35 of 2009 which contains specific minimum penalties, namely Article 114 paragraph (1) of Law No. 35 of 2009 with a specific minimum penalty in the form of imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 1,000,000,000 (one billion rupiah) and a maximum of 10,000,000,000 (ten billion rupiah), and in the Second Indictment Article 111 paragraph (1) of Law No. 35 of 2009 with a minimum minimum specific criminal sentence of imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp.800,000,000.00 (eight hundred million rupiah) and a maximum of Rp.8,000. 000,000.00 (eight billion rupiah).

Referring to the article charged in the Indictment, based on the facts revealed in court, The Public Prosecutor in his Claim No. Regeg.Paraara: PDM - 42 / L.3.15/Ep.3/06/2019 dated 31 July 2019 proved the Second Indictment violated Article 132 paragraph (1) Jo Article 111 paragraph (1) of the Act - Number No. 35 of 2009 and the defendant is sued by the Public Prosecutor to be found guilty of violating Article 111 paragraph (1) of Law No. 35 of 2009, with criminal offenses, namely imprisonment for 5 (five) years each reduced while the defendants are in custody and a fine of Rp.800,000,000 (eight hundred million rupiah) for a six-month subsidair, with the order of the defendants still being detained. The duration of a corporate criminal suit prosecuted by the Public Prosecutor is only 1 (one) year above the specific minimum criminal in Article 111 paragraph (1) of Law No. 35 of 2009.²² Furthermore, the Solok

²² Claims on behalf of Marni Putri Susanti No.Reg. Case: PDM - 42 / L.3.15/Ep.3/06/2019 on 31 July 2019

District Court Judge examined and tried the Narcotics criminal case on behalf of the defendant Marni Putri Susanti Calling Marni and her friends in Decision Number 75 / Pid.Sus / 2019 / PN.SLK on 12 August 2019 stated that they agreed with the Public Prosecutor that on behalf of the defendant Marni Putri Susanti the Call of Marni et al proved to violate Article 132 paragraph (1) Jo Article 111 paragraph (1) of Law No. 35 of 2009 and sentenced the defendant Marni Putri Susanti to Call Marni and friends with imprisonment for 4 (four) years respectively.

The Judge's consideration in Decision Number 75 / Pid.Sus / 2019 / PN.SLK on 12 August 2019 on behalf of the defendant Marni Putri Susanti Call Marni and friends, after the Judge's opinion regarding the explanation of the fulfillment of the elements of Article 132 paragraph (1) Jo Article 111 paragraph (2) of Law No. 35 of 2009, The Panel of Judges examining and adjudicating the case only conveyed consideration, that with the fulfillment of the elements in the second alternative indictment and during the examination the Panel of Judges found no reason to forgive or justify the defendants themselves the Panel of Judges believes that the defendants have been proven legally and convincingly guilty of committing crimes "Evil agreement against the law of storing and possessing Narcotics of Group I in the form of plants" as regulated and threatened with criminal offense in Article 132 paragraph (1) Jo Article 111 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, and considers that because the defendants have been proven guilty then the defendants will be convicted.²³

Furthermore, the Panel of Judges gave consideration, that due to the provisions of Article 111 paragraph (1) of Law Number 35 Year 2009, the existence of a fines other than imprisonment, the Panel of Judges will impose a fine other than imprisonment of the amount specified in the ruling, and give consideration, that in this case the defendants themselves have been subject to a period of legal arrest and detention, then the period of arrest and detention must be deducted entirely from the penalties handed down as provided for in Article 22 paragraph (4) of the Criminal Procedure Code;

In addition to considering juridically from the elements of the article charged, the Panel of Judges also considered the non-juridical circumstances, namely as follows:

Incriminating circumstance:

- The actions of the accused disturbed the community;
- The actions of the defendants contradicted the government's program which was intensively eradicating Narcotics crime.

Relieving circumstances:

- The defendants have family dependents
- The defendants were polite in court proceedings;
- The defendants felt sorry for their actions and promised not to repeat their actions

As for the conviction for Narcotics crime in the name of Marni Putri Susanti Call Marni, and friends with due regard to the provisions of Article 132 paragraph (1) Jo Article 111 paragraph (1) of Law NO. 35 of 2009 concerning Narcotics The Panel of Judges at the Solok District Court handed down the verdict declaring the defendant 1. Marni Putri Susanti Call Marni and the defendant 2. Seprianda Call Rian is proven legally and convincingly according to law guilty of committing a crime "Engaging in evil agreements against the law of storing and possessing Narcotics of Group I in the form of plants" in the second alternative indictment and impose criminal charges on the defendants, therefore, with imprisonment of 4 (four) years each and a fine of Rp.800,000,000 (eight hundred million rupiah) provided that if the penalty is not can be reimbursed with imprisonment for 3 (three) months each.

²³ Solok District Court Decision on behalf of Marni Putri Susanti Number 75 / Pid.Sus / 2019 / PN.SLK dated August 12, 2019.

If the Judge's consideration in the verdict Number 75 / Pid.Sus / 2019 / PN.SLK dated August 12, 2019 is in the name of the defendant Marni Putri Susanti Call Marni and her friends after consideration of clarifying the facts of the fulfillment of the elements of Article 132 paragraph (1) Jo Article 111 paragraph (2) of Law No. 35 of 2009, still only contains juridical arguments, that is the explanation of the defendant's responsibility for the proven charges.

In contrast to the Judge's consideration, in the decision of the Narcotics crime case on behalf of the defendant Agusrini Call Rini, both in the Solok District Court Decision, The Padang High Court's decision, which took over the judgment of the Solok District Court Judge, as well as the Judge's consideration in the Supreme Court's Decision in the Cassation examination of the case, which not only considers the fulfillment of the juridical element or the statutory regulations only from one of the articles charged, but also consider other matters within the defendant outside the fulfillment of the juridical element, namely as stated in the Judge's consideration in the Decision of the Solok District Court in Decision No. 40 / Pid.Sus / 2014 / PN.SLK dated July 17, 2014 and the consideration of the Supreme Court Judge in Decision No. 1910 K / PID. SUS / 2014 dated February 10, 2015, as follows:

"Considering, that considering the above mentioned conditions when compared with the proven indictment, namely Article 111 paragraph (1) of Law Number 35 Year 2009 concerning Narcotics whose minimum threat is 4 (four) years in prison, raises the question in our mind the Panel of Judges is it appropriate that a woman who is pregnant carrying only evidence 2.75 (two point five) grams is sentenced to a prison sentence of 4 (four) years? And besides, the Defendant is not a narcotics leader. This really disturbs our feeling of justice as a Judge, because the Judge's duty is not only as a mouthpiece of the Law, but more importantly the Judge's task is to provide justice; " (Solok District Court Decision No. 40 / Pid.Sus / 2014 / PN.SLK dated July 17, 2014).

"That the reasons for the appeal of the Prosecutor / Prosecutor cannot be justified because even though Judex Facti has deviated from the special minimum limit specified in Article 111 paragraph (1) of Law Number 35 Year 2009, namely 4 (four) years in prison, however due to the condition of the Defendant a woman who is pregnant so besides the Defendant herself who will undergo the criminal also the baby in her womb which according to Law Number 23 of 2002 concerning Child Protection called a child is a person who is not yet 18 (eighteen) years old including child in the womb, thus it is fair and includes the exceptional nature to deviate from the specific minimum threshold for imposing the criminal provisions stipulated in that article; " (Supreme Court Decision No. 1910 K / PID.SUS / 2014 dated February 10, 2015)

Judge's considerations outside the fulfillment of the juridical element, departing from the facts revealed at the trial, which, according to the judge, who examined and tried the case must be considered in order to fulfill or uphold justice.

Based on the description above, there is a fundamental difference in the Judge's consideration in the decision of the Narcotics crime case on behalf of the Defendant Agusrini Call Rini with the decision of the Narcotics crime case on behalf of the Defendant Marni Putri Susanti Call Marni, although the weight of the case is equal. On the consideration of the judge in the case of Narcotics crime in the name of the defendant Agusrini Call Rini in addition to considering the fulfillment of juridical elements or laws and regulations of one of Article 111 paragraph (1) of Law No. 35 of 2009 also considers other matters regarding the defendant outside the fulfillment of the juridical element because there is a condition or condition in the defendant Agusrini Call Rini which according to the Panel of Judges must be considered to reach a fair decision. Whereas in the judge's consideration in the Narcotics criminal case verdict on behalf of the Defendant Marni Putri Susanti, Marni Call was more or only considered the fulfillment of

the juridical element or the statutory regulations of one of the Public Prosecutor's indictments, namely Article 111 paragraph (1) of Law No. 35 of 2009.

Conclusion

1. Proving Narcotics crime on behalf of the defendant Agusrini Call Rini in Solok District Court, the writer concluded that it was in accordance with the evidencing system adopted by the Criminal Procedure Code, that is the evidence according to the Law is negative, the evidence submitted by the Public Prosecutor is legal evidence and has the strength of proof and has exceeded the principle of the minimum limit of proof, that is "With at least two legal pieces of evidence" so that the Judge obtained the conviction that the defendant Agusrini summons Rini guilty of committing a crime of one of the indictments charged by the Public Prosecutor, namely Article 111 paragraph (1) of Law No. 35 of 2009 as the first Indictment.
2. Judge's consideration of imprisonment under the special minimum criminal threat in Narcotics crime on behalf of the defendant Agusrini. Calling Rini in Solok District Court under the minimum criminal threat Article 111 paragraph (1) of Law no. 35 of 2009, according to the author can be justified normatively and theoretically. Normatively because Judges in the perspective of Judicial Power Judges are required to explore, follow, and understand the legal values and sense of justice that lives in society. Whereas theoretically, first, according to the theory of independence or freedom of the Judge, the Judge is not only as a mouthpiece of the Law but also as a mouthpiece of justice, and secondly according to the theory of justice and the theory of the purpose of punishing sentences imposed by the District Court Judge Solok, The Padang High Court Judge and the Supreme Court Judge have fulfilled their sense of justice, because not only consider the actions of the defendant AgusRini Call Rini but also due to the conviction of the defendant Agusrini Call Rini

Reference

1. Books
Anggi Prayurisman, 2011, Application of Criminal Sanctions Under Special Minimum Threats in Corruption Cases, Andalas University Postgraduate Thesis, Padang.

Bambang Sutiyo, 2003, Justice Reform and Law Enforcement in Indonesia, Indonesian Islamic University Pres, Yogyakarta.

Bernard L. Tanya, 2006, Legal Theory of Orderly Human Strategy across Spaces and Generations, Commanditaire Vennootschap Kita, Surabaya.

Dani Krisnawati, 2006, Special Criminal Law, Pena, Jakarta.

E.Y Kanter and S.R.Sianturi, 2002, Principles of Indonesian Criminal Law and Its Application, Styria Garfika.

H. Salim HS, 2014, Application of Legal Theory in Dissertation and Thesis Research, Rajawali Press, Jakarta.

H.M. Agus Santoso, 2012, Moral Law and Justice, Kencana, Jakarta, Pg. 91.

Supandriyo, 2019, Principle of Freedom of Judges in Criminal Comprehensive Comprehensive Study of Crimes with Special Minimum Threats, Meaning of Bumi Intaran, Yogyakarta.

2. Regulation

Explanation of Law Number 35 Year 2009 Regarding Narcotics.

Solok District Court Decision On behalf of Marni Putri Susanti Number 75 / Pid.Sus / 2019 / PN.SLK dated August 12, 2019.

3. Government Document

Indictment of Public Prosecutor's Attorney Solok NO.REG.PERKARA: PDM-79 / SLK / 06/2014 On behalf of Defendant Agusrini Call Rini.

Indictment No. Reg. Case: PDM - 42 / L.3.15/Ep.3/06/2019 on 24 June 2019.

Claims on behalf of Marni Putri Susanti And friends No. Reg. Case: PDM - 42 / L.3.15/Ep.3/06/2019 on 31 July 2019.

4. Website

5.9 Million Indonesian Children Become Drug Addicts ", from <https://news.okezone.com>.

National Narcotics Agency says 24 percent of drug users are students, this is the response of the Ministry of Education and Culture ", from <http://www.tribun.com>.

Sahroni House of Representatives: Eradication of Drugs and Terrorism Raise the Image of the National Police in 2018 ", from <https://www.liputan6.com>.

Increased Drug Confiscation ", from www.kompas.com.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).