



Independence of Judge in Imposing Punishment Specifically on Narcotics Crime

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Abstract— The promulgation of a legal rule is expected to provide definite limits on actions that are permitted and not permitted according to the law. These limits then become a benchmark for the correctness of a person's behavior. Various countries still consider distributing narcotics to be a prohibited act. Nevertheless, these criminal acts continue to occur, even in Indonesia. Legal issues arose when narcotics trafficking in Indonesia continued, but the judge issued a decision that was lighter than the prosecutor's demands. This article aims to understand the judge's authority in deciding criminal cases. Analysis was carried out using doctrinal methods. The statutory and conceptual approach shows that judges have freedom in deciding the cases they handle. The judge's independence allows the judge to hand down a lighter decision than the prosecutor's demands.

Keywords— *Independency; Judge; Penal Code*

I. INTRODUCTION

Legal rules should be a reference for a person's actions. Every ethics and truth recognized by a country will be based on applicable social norms.[1] In this case, ethics and social norms can also be found in several favorable legal rules. By promulgating a legal rule, society can live in an orderly manner and not violate the rights of other citizens. The orderliness of life protected by the rule of law is the ideal and goal of the existence of the legal product itself.[2]

The legal regulations created then need a series of other rules supporting the implementation process. In this case, legal rules are then bound together and form a legal system. The chain of legal validity is the common thread that connects the values of the legal system. Based on this understanding, legal development in Indonesia is also carried out based on the Pancasila values, which underlie all applicable legal products.[3]

This imitation of the values of Pancasila is also the basis for the validity of the criminal law in force today. After more than seventy years of independence, the Indonesian government has just completed and promulgated the Criminal Code (CC)[4], and it will soon come into force bindingly to replace the old CC. Even though these regulations have changed, the court is still the institution that has the authority to carry out the judicial process.

The law enforcement process for criminal acts in Indonesia will undoubtedly involve various law enforcement officials, starting from the police, prosecutor's office, advocates, and judicial institutions. The procedures used to carry out the trial process will be under the Criminal Procedure Code (CPC), which is currently in effect.[5], [6] Procedural guidelines and articles that can be used to ensnare perpetrators of criminal acts are legal products that can expressly guarantee the creation of a fair judicial process following applicable legal regulations.

It is an essential reference in handling criminal cases while also providing legal certainty for someone to be able to fight for the rights they have. The modern punishment system that has begun to be adopted in Indonesia

has guaranteed the proportionality of the threat of punishment and the crime committed. It is hoped that this provision will not only deter perpetrators but also provide a sense of justice for victims.

In some cases, criminal acts can ensnare perpetrators who have caused direct harm to victims following CC provisions. On the other hand, the government also protects all citizens from the threat of crime and losses that may arise from criminal acts committed by someone. One example of this action is the distribution of narcotics.[7]

In particular, the government has imposed a ban on the distribution of narcotics in Indonesia. The negative impacts caused by the use of illegal drugs are not only anticipated by Indonesia but also by various countries in the world. For this reason, the government continues to strive to eradicate the circulation of narcotics in order to protect the future of Indonesia's young generation. One form of government assertiveness can be seen in the existence of criminal sanctions for perpetrators who distribute narcotics. In the Law on Narcotics, the government has stated that narcotics dealers can be sentenced to up to twenty years in prison and even the death penalty.

A public prosecutor can carry out the process of prosecuting criminals and criminal acts committed by drug dealers. Before the judicial process begins, usually, the police make arrests of people suspected of being perpetrators of crimes. In the judicial process, evidence will then be provided to ensnare the perpetrator following the articles used by the prosecutor in his indictment.

This process shows that agencies must be able to work together to enforce the legal system in Indonesia. When facing the trial process, the defendant can be accompanied by an advocate to defend his position and protect his rights. In the end, the legal process will be decided by the judge acting to try the current case.

Recently, news about public figures caught in cases of narcotics distribution and use has increasingly been broadcast in various media. This condition certainly raises serious concerns among young people. This figure, who should be a role model and be idolized by the nation's next generation, is even more involved in criminal acts.

Due to these concerns, it is appropriate that legal efforts to enforce and eradicate narcotics trafficking in Indonesia must be taken seriously. The proportionality of punishment for narcotics traffickers should be assessed from the negative impact caused by their actions. Not only assessing the decline in the health and mental quality of a user who is addicted to illegal drugs but also the vast potential lost due to the decline in the quality of the nation's children.

Thus, it is appropriate for the government to show the severity of the punishment that a narcotics trafficker must bear. This reality needs to be a learning model for the nation's children so that they are not tempted by the lure of anything promised by narcotics users. However, legal issues then arose when the judge's decision regarding the crime of narcotics trafficking was not as severe as the sentence that should have been imposed on the suspect. One case that has attracted much public attention is the trial process and verdict against Zulkifli, or what is known as 'Zul Zivilia.' This case clearly shows that the judge imposed a lighter sentence than the prosecutor's request.

This study will specifically review the authority of judges in determining decisions on cases they are handling. This study will be carried out based on the theory of judge's independence. The research process will be carried out using doctrinal legal research methods. The conceptual framework used in this research will explain the judge's authority in the trial process. The results of this study will show how judges should consider the prosecutor's demands, legal rules, and considerations in determining the proportionality of the sentence that should be imposed on the defendant.

II. LITERATURE REVIEW

The governance of a country is very dependent on the model of government it adopts. In the history of the development of science, Montesquieu was one of the pioneers of the separation of powers. As stated by Lord Acton, absolute power will create a greater danger of corruption.[8] For this reason, the development of the model of separation of powers from state institutions has been very rapid. The government system's power will be divided into the executive, legislative, and judicial domains. Each type of power has different authorities and roles in implementing the government system. In this case, executive power is usually held by the president or prime minister and ministers as state administrators. Then, the legislative body consisting of members of parliament will have the authority to form laws and regulations. Finally, the judiciary is a government authority that has a role in carrying out the judicial process. These three types of roles were later better known as a form of trias politica.[9]

Separation of powers, which then gives different roles to each state institution, is one way to ensure balance in decision-making. Apart from that, the monitoring mechanism between state institutions will also provide space for accountability in the performance of state administrators, which can further foster public trust. Public trust in state administrators is essential to ensure that the implementation process of a policy can run well. However, the law is one of the instruments used by the government to provide certainty, prosperity, and justice for all citizens without exception.

Regarding violations of legal norms that the government has promulgated, judges have an essential role in ensuring that violators will receive punishment following the applicable regulations. Referring to the theory of authority, the judge's duty to decide a case is part of the formal power granted by law. As mentioned above, *trias politica* has allowed judges to stand independently as part of an institution with judicial power. The independence of judges in deciding a case is critical to ensure that the decisions made comply with applicable legal rules. Also, based on the theory of authority, it is found that the judge's freedom to determine the length of a person's detention period must also be based on the provisions of the statutory regulations, which are the basis for the prosecution process. For this reason, in this study, we will review in depth how judges can determine a decision as a form of law enforcement against narcotics trafficking crimes in Indonesia.

III. METHOD

The doctrinal legal research method is used in this study to see the ideal form of a judge's authority in deciding a case.[10] Conceptual and statutory approaches are used to map legal materials that can support this research. The case approach is the key to seeing the influence of the principle of judge's freedom in determining sentences for perpetrators of criminal narcotics trafficking in Indonesia. The results of the study are presented in descriptive form.[11]

IV. DISCUSSIONS AND RESULTS

The concept of separation of powers proposed by Montesquieu has illustrated the importance of dividing power between state institutions. This concept opens up the possibility of a checks and balances mechanism in carrying out government processes. In addition, with the separation of powers, it is hoped that each institution can carry out its functions well, without any intervention from other agencies, so that professionalism and neutrality in carrying out the duties and functions of state administration can run well.

Talking about the laws and regulations in Indonesia, it is necessary to trace the authority that made and enforced these rules. If the legal regulations used as reference are laws, then the authority to form these regulations lies with the state legislative institution. The DPR is central in discussing and enacting draft laws in this case. Referring to the provisions provided by the Constitution, a bill can come from the President or the DPR. However, the discussion of these regulations is in the hands of the DPR. When the DPR approves the proposed draft, it will submit it to the President for approval.

In this case, the judiciary must have the authority to participate in policy-making. The judiciary will be tasked with enforcing the rules by the President and the DPR. However, the Constitutional Court and the Supreme Court have the authority to conduct reviews of the material and procedures for making these regulations. This authority cannot be used to create new policies actively, but it can be used to ascertain whether rules that have been tested still have binding legal force.

The law enforcement process regarding these regulations needs special attention from the government.[12] Conformity of the material contained in the regulations with the law enforcement process is the key to creating legal certainty and protection for every citizen subject to the applicable law. To create accuracy in the process of implementing and enforcing the law, the ability of judges to interpret the material contained in each law is required. This ability is needed so that the decision-making process can be carried out well so that justice can be provided for all parties.

Interpretation of applicable legal rules is a natural thing to do. This occurs because of the limited ability of legislators to formulate the diction and sentences used to draft legal products. In several countries, a judge's decision-making freedom is not only based on the ability and freedom to interpret the legal rules. However, judges are also given the authority to make rules that can serve as a reference for handling similar cases in the future. However, judges in Indonesia need to have this kind of authority.

The justice system in Indonesia is closely related to the supremacy of law and statutory regulations. This is the basis for the authority of judges to act and decide cases following legal rules that have been legally implemented in Indonesia. Nevertheless, the judge's freedom can still be seen in interpreting the material of the applicable law. Apart from that, the independence of the judiciary can also ensure that no party can intervene in the decisions made by the judge.

To decide cases in criminal cases, the judge's freedom can at least be used as a guarantee for the implementation of three main things. First, the freedom of judges is based on the theory of legislative supremacy. As previously explained, this concept limits the authority of judges to act and make decisions. The applicable laws and regulations will bind all considerations and authority of the judge. Judges need the authority to make new rules.

As an understanding that contrasts with the first doctrine, in the second doctrine, the freedom of judges can be interpreted more broadly because judges are seen as lawmakers. This understanding is based on the consideration that the law is a form of conservative and static product. Sometimes, laws can be in effect for decades without undergoing changes and adjustments. Even though conditions like this can provide legal certainty for the

community, in terms of legal substance, there certainly needs to be an update that can be used to keep up with current developments and resolve current problems.

This understanding specifically also implies that no law is made perfectly. Imperfections in laws can arise when they have to be implemented directly in people's lives. Some materials and restrictions created by the legislature can trigger controversy or rejection from the public if the regulations are deemed less relevant for solving social problems. Based on these considerations, several countries have given judges more authority to enjoy their freedom in forming new rules.

Third, the form of freedom of judges can be interpreted as a condition that supports the argument that judges play an essential role in ensuring that the material law will be able to bring justice when implemented. This concept can illustrate the importance of judge objectivity in considering the type and amount of sanctions that should be given to perpetrators of criminal acts. Even though the substance of the regulation has accommodated a sense of justice for the parties, if the judge cannot consider the correct aspects, then that sense of justice will not emerge.

As explained in the description above, judges in Indonesia have the freedom to decide on a case based on the rationality and objectivity they have built. The law is the basis for judges to determine the level of criminal law violations committed by a defendant. In this case, the judge must decide following the article alleged against the defendant. However, judges can determine the type and amount of sanctions that must be received. The judge is not obligated to adjust his decision to the indictment read by the prosecutor.

In this case, the judge still has the freedom to determine different sanctions as long as the decision does not violate the provisions of the articles in the law being used. This condition can be seen in the judge's decision regarding the narcotics case that ensnared Zul Zivilia. Even though the prosecutor requested that the defendant be sentenced to life imprisonment, the judge decided that the defendant only needed to serve 18 years. This decision is undoubtedly lighter than the demands given by the prosecutor. However, the judge did not violate the statutory regulations because the regulations only stated that the maximum punishment for the defendant was 20 years or the death penalty. For this reason, in this case, the judge has used his freedom as a basis for assessing the proportionality of the sentence that should be imposed on the defendant.

V. CONCLUSION

Judges in Indonesia have the freedom to determine the proportionality of the sentence a defendant must serve. Nevertheless, judges must continue to uphold the supremacy of the law so that the decisions they make must be in accordance with applicable legal provisions. In some cases, the judge can give a decision lighter than the prosecutor's demands when the judge's objective rationality assesses that this condition is the most proportional to apply.

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