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The Judge's Consideration in Sentencing Illegal Drug Distribution in Case No.105/Pid. Sus/2019/Pn. Slw

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ABSTRACT

The rampant circulation of illegal drugs shows that the level of public awareness is still low against the risk of drug use that does not meet the requirements of BPOM. Case Number 105/Pid.sus/2019/PN.Slw is a case about illegal drug trafficking without permission from BPOM. This research was conducted to find out the considerations used by judges in sentencing in Case Number 105/Pid.sus/2019/PN.Slw. This study uses a qualitative approach. The type of research used is sociological juridical. Secondary data is collected through library studies. Primary data is collected through interviews. The results showed that the judge, in his decision, used balance theory,

scientific theory and ratio decidendi theory in order to get a fair verdict in handing down the verdict.

KEYWORDS

Illegal drugs, Judge's consideration

1 INTRODUCTION

Health is one of the basic human needs and is a right for every citizen who is protected by law. Every country recognizes that health is the largest capital for achieving prosperity. Therefore, the improvement of health services is basically an investment in human resources to achieve a prosperous society (Mikho, 2020).

Efforts in maintaining or restoring health from various diseases are by taking drugs and doing regular exercise. Drugs play a vital role in recovering or maintaining human health. Therefore, a drug must go through testing efficacy, safety and quality of high standard in order to be safely consumed by humans. As the current of globalization increases, the crime of illegal distribution of drugs is increasingly being committed (Andin, 2016).

Drugs circulating in the community must have a marketing permit, both domestically produced drugs and imported drugs, issued by the Head of the Food and Drug Supervisory Institution (BPOM). Drugs with marketing permission from the BPOM show that the drug is suitable for consumption and meets safety, efficacy / benefits, and quality requirements. Drugs that are not registered first then the drug is an illegal drug.

Case NO.105/PID. SUS/2019/PN. SLW is a criminal offence of illegal drug trafficking. The defendant had traded and consumed hexymer pills hexymer pills and drugs such as Koplo pills with the logo Y. From the proceeds of selling illegal drugs, the defendant got profits used for daily purposes.

Hexymer pills contain the active substance Trihexylphenidyl. These pills are often misused by the public. Trihexylphenidyl and Tramadol are a group of hard drugs and are classified in Certain Drugs (OOT) in accordance with the regulation of the Indonesian Food and Drug Supervisory Agency No. 10 of 2019 on Guidelines for The Management of Certain Drugs. Hexymer drugs are drugs that act on the central nervous system such as narcotics and psychotropics. Use of Hexymer above therapeutic doses can cause dependence and typical changes in mental activity and behavior. Hexymer is specifically used as a medicine for Parkinson's sufferers. Tramadol is a pain medication that works on the central nervous system. This drug can cause dependence when used not in accordance with the doctor's recommendations.

The phenomenon of illegal drug distribution today cannot be separated from the involvement of the community itself. The level of public awareness is still low against the risk of drug use that does not meet the safety and quality requirements of BPOM. The lower middle class tends to take drugs sold in stores other than pharmacies. The issues raised in this study are how the Judge's consideration in the sentence in Case No. 105 / Pid.sus / 2019 / PN.Slw.

2 METHOD

This research uses a qualitative approach. The type of research used is sociological juridical. Sociological juridical research is a way of presenting subject matter by jumping directly at the research site to conduct research on the object to be studied. The data used in this study is primary data and secondary data. The primary data was obtained through an interview with the Judge at the Slawi District Court, BPOM in Semarang. Secondary data is obtained through library studies in Case No. 105/Pid.Sus/2019/Pn.Slw, journals, and books.

3 RESULT AND DISCUSSION

A. The Judge's Consideration in the Sentence in Case No. 105 / Pid.sus/2019/PN.Slw

The Judge's decision is something that is very desirable or eagerly awaited by the litigating parties to resolve disputes between them as well as possible.

Court rulings are the most effective means of identifying the legal system because they are the result of the formulation of legal rules. The judge, in sentencing, must provide a legal argument justifying his verdict. The court's decision serves to uphold the rules of the law. In this sense, the court's decision is one of the most important legal resources in the legal system in addition to the laws and regulations (Maisusri, 2016).

The duty of the Judge, in examining and adjudicating criminal cases, is not only based on existing laws. The judge must also seek and dig deeper into the legal facts which are then poured into the Judge's Consideration. Article 14 paragraph (2) of Law No. 48 of 2009 on The Power of Justice states that in a consultative hearing, each Judge must submit a written consideration or opinion on the case being examined and become an integral part of the verdict. A judge in deciding a criminal case must be based on legal facts at the time of trial, the evidence presented in the trial and based on his own knowledge and beliefs.

The consideration of judges is divided into two, namely juridical and non-juridical considerations (Muhammad, 2007). Judges, especially Supreme Court Judges in deciding and imposing criminal sanctions on a defendant, judges must have their own considerations both from juridical considerations and non-juridical considerations. Juridically considered is the proof of "the elements of a criminal offense whether the defendant's actions have fulfilled and in accordance with the criminal acts that have been charged by the prosecutor / public prosecutor" (Mulyadi, 2014). Juridical considerations in case Number 105/Pid.Sus/2019/PN.Slw include the prosecutor's indictment, the defendant's testimony, a number of witnesses, evidence and a number of articles that were proven to be violated.

B. Indictment of the Prosecutor General

The formulation of the indictment is based on the results of the examination. The Public Prosecution Indictment is prepared in an alternative form, namely the First Charge violates Article 197 of Indonesian Law No. 36 of 2009. The Second Charge violates Article 196 of Law No.36 of 2009. The Third Charge violates Article 98 paragraph (2) of Law No.36 of 2009

The judge in sentencing should refer to the indictment. Article 182

paragraph 4 of the Kuhap states that a Judge decides a case based on an indictment made by the Public Prosecutor. The actions of Defendant Slamet Teguh Ariski have fulfilled all the elements contained in Article 197 of Law No. 36 of 2009 on Health. The elements are as follows.

1. Elements of Each Person

Everyone is anyone who is the subject of legal support of rights and obligations, both persons and legal entities, who can be held accountable for all his actions before the law. The accused, based on the results of the examination, is a person who is able to be responsible.

2. Elements that intentionally produce or distribute pharmaceutical preparations and/or medical devices that do not have a marketing permit as referred to in Article 106 paragraph (1).

Intentionally according to *Memorie Van Toelichting* (MVT) is will and know. That is, a person who commits an action intentionally, must want and realize the action and / or its consequences.

Producing according to the *Great Dictionary Indonesian* is producing, producing results (*Pusat Pembinaan dan Pengembangan Bahasa*, 1999). Based on this, the Defendant must actually carry out an activity that produces pharmaceutical supplies and/or medical devices that do not have a marketing permit.

Distributing according to the *Great Dictionary Indonesian* is to bring (deliver) goods and so on from one person to another (*Pusat Pembinaan dan Pengembangan Bahasa*, 1999). Based on this, the Defendant must actually bring pharmaceutical supplies and / or medical devices that do not have a marketing permit and then convey pharmaceutical preparations and / or medical devices that do not have the distribution permit to others.

Pharmaceutical preparations based on Article 1 number 4 of the Law of the Republic of Indonesia Number 36 of 2009 are drugs, medicinal ingredients, traditional medicine, and cosmetics.

Medical devices based on Article 1 number 5 of the Law of the Republic of Indonesia Number 36 of 2009 are instruments, apparatuses, machines and/or implants that do not contain drugs used to prevent, diagnose, cure and alleviate diseases, treat the sick, restore health in humans, and/or form

structures and improve body functions.

The facts of the trial prove that:

- a. The defendant sold Hexymer pills to a friend of the accused named Witness Siskandar 3 (three) times. Police officers arrested the accused. Officers then conducted a search and found evidence again in the closet drawer in the defendant's room. The evidence is in the form of a wallet containing 6 packages of Hexymer pill drugs that total 18 (eighteen) items and 18 packages of drugs type koplo with the logo Y which totals 69 (sixty-nine) items.
- b. Experts state that Hexymer pill drugs are a type of hard drug / G List sold or circulated by pharmacies that already have a license (SIA). Hexymer pills are hard drugs in addition to those included in OOT (certain drugs) that in the purchase and consuming must be with a doctor's prescription. Experts state that, in accordance with the regulation of Law No. 36 of 2009, in buying hexymer drugs must be by using a doctor's prescription and intended for patients listed in the prescription. The defendant did not work as a doctor, had no expertise in pharmaceuticals and did not have official permission to manufacture, distribute or sell the hexymer pill.

C. Evidence

Evidence submitted by the Public Prosecutor, in the form of:

1. (one) package of Heximer pill drugs wrapped in clear white plastic clips containing 4 (four) items;
2. (one) red plastic wallet inscribed with Banjara Live Gold Shop containing 6 (six) packages of Heximer pill drugs wrapped in clear white plastic clips totaling 18 (eighteen items) and 18 (eighteen) packages of koplo pills with Y logo totaling 69 (sixty-nine) items

The results of the examination of the evidence mentioned above are not narcotics /psychotropic but contain Positive Trihexyphenidyl which is included in the List of Hard Drugs / List G.

D. Witness Testimony

A witness is a person who can give evidence for the purposes of investigation, prosecution and justice about a criminal case that he heard himself, he saw for himself and experienced himself. (Amin, 2020). Witnesses in case number 105/Pid.Sus/2019/PN.Slw are Jaka Rangi Prabowo Bin Mulyad (Witness 1), Siskandar Bin Kursim (Witness 2), Deriyanto Sirait (Witness 3) and Totok Sugiarto Bin Tujowikarto, S.Si, Apt (Expert Witness).

E. Defendant's Testimony

Defendant's testimony is the information given by the Defendant in front of the trial about the deeds committed or known to the defendant himself or experienced by the defendant himself (Susi, 2019). The defendant, in court, admitted that he had committed a criminal offence as charged against him. However, the defendant's testimony alone cannot be used as a basis by the Judge to establish and sentence the Defendant. The defendant's testimony must also be accompanied by evidence (Article 189 paragraph 4 of the Criminal Procedure Code).

F. Nonjuridical Considerations

A judge in sentencing must make non juridical considerations. Non-juridical considerations consist of the background of the defendant's actions, the impact of the defendant's actions, the circumstances of the defendant when committing the crime. The considerations of non juridical judges in Case Number 105/Pid.Sus/2019/PN.Slw are:

- a. Defendant's Background: The defendant worked as a laborer and worked to help parents with an income of approximately Rp. 1,000 000,00
- b. Defendant in Committing a Criminal Act: The defendant sold twenty hexymer pills to his friend for Rp. 50,000. The remaining drugs were taken alone by the accused.
- c. The impact of the Defendant's actions: consumption of hexymer pills has an impact on the health of the accused, namely the defendant becomes limp and slightly fly

The judgment of the judge which includes non juridical considerations are

things that alleviate and incriminate the Defendant, namely:

Incriminating things:

The defendant's actions in distributing pharmaceutical supplies without a marketing permit have disturbed the community.

Things that lighten up:

1. The accused was polite and forthright at the trial
2. The accused is sorry and promises not to repeat his actions
3. The accused has never been convicted

Based on the above juridical and non juridical considerations, the judge ruled that the defendant was sentenced to imprisonment for 6 months and a criminal fine of Rp. 10,000,000. If the fine is not paid, it is replaced by light imprisonment for 1 month. Slawi District Court Decision No. 105/Pid.sus/2019/PN.Slw is expected to deter defendants who distribute drugs illegally and can have psychological effects on all levels of society so as not to commit such crimes.

The judge in sentencing must be oriented to the purpose of giving a sentence that is inseparable from preventive factors so as not to occur criminal acts and countermeasures after the occurrence of criminal acts. As for the awarding of punishment can be seen from the philosophical aspect of criminal punishment itself. In ruling No. 105/Pid.Sus/2019/PN.Slw, the judge used a combined (Integrative) theory in sentencing. The combined theory states that the purpose of punishment in addition to avenging criminals' mistakes is also intended to protect society, by realizing order (Firdaus, 2017). The use of the combined theory in the verdict No. 105/Pid.Sus/2019/PN.Slw explicitly seen from the judge's consideration which states that the purpose of the Judge is not solely to provide a deterrent effect for the perpetrator or prevent others from doing the same deed but also to try so that the perpetrator does not repeat the deed and can return to society in a good condition. The law in essence is the protection of the community and retaliation against unlawful acts.

The judge's ruling is essentially a complex process and requires the fundamentals of juridical scientific considerations that can resolve the parties' disputes. The judge is fully held over the decision to be made with reference to the existing legal sources. Legal doctrine and/or theory play an important role

in guiding judges to make qualified judgments and are able to accommodate the legal objectives of justice, certainty and expediency.

The judge's consideration in sentencing is not just using juridical and non juridical considerations only. Mackenzie stated that there are several theories or approaches that can be used by judges in handing down verdicts (Wijaya, 2010), namely:

1. Balance Theory

The balance here is the balance between the conditions determined by law and the interests of the parties concerned with the case. This balance in practice is formulated in consideration of matters that incriminate and alleviate criminal convictions for the accused, where the interests of society are formulated in burdensome matters and the interests of the accused are formulated mitigating matters.

Looking at the balance theory, the judge in sentencing, in case number 105 / Pid.Sus / 2019 / PN.Slw, considers the balance between the accused and the community. The balance is incriminating and mitigating for the accused. Both of these are factors that determine the severity of the punishment that can be given to the accused (Article 197 paragraph (1) letter f Criminal Procedure Code).

2. Theory of the Art and Intuition Approach

The Theory of The Art and Intuition Approach states that judges, in deciding a sentence, use more instinct or intuition than the knowledge of the judge. The judge with his conviction will adjust to the circumstances and appropriate punishment for each criminal offender. The judge's beliefs are subjective. But it's still necessary to decide things. The judge in deciding the criminal case is not allowed to base only on his beliefs. The judge must also consider the evidence presented at the trial.

3. Scientific Theory

The judge, in deciding a case, should not be solely on the basis of intuition alone but must be equipped with legal knowledge and scientific insight of the judge. Thus, the verdict that was handed down can be accounted for. Judges, in trials, often ask for information from competent experts in their fields. The judge, in case Number 105/Pid.Sus/2019/PN.Slw, presented expert witnesses

from the Health Service. Therefore, the judge is obliged to master various theories.

4. Experience Theory

The judge, in making the decision, uses his experiential approach. A judge's experience is a thing that can help in dealing with the things he faces on a daily basis. The more experience the judge has in deciding a case, the more the judge is expected to be more professional, fair and wise in making decisions.

5. Decidendi ratio theory

This theory is based on a fundamental philosophical foundation. The ratio decidendi theory considers all aspects related to the disputed subject matter. The ratio decidendi theory is a judge's decision based on material facts (Rifai, 2011) The foundation of philosophy is part of the judge's consideration in handing down the verdict, as it relates to conscience and a sense of justice from within the judge. The judge's decision is expected to provide a sense of justice, both procedural justice and substantive justice, while still considering all related matters such as aspects of education, aspects of humanity, aspects of law enforcement, aspects of expediency and aspects of legal certainty.

The ratio decidendi in case number 105 / Pid.Sus / 2019 / PN.slw obtained through the trial process and the discovery of the judge's law. The basis of the judge's decidendi ratio is used in the formulation and preparation in the Amar Judge's Ruling.

6. Theory of Wisdom

The theory of wisdom has several purposes, namely as an effort to protect against perpetrators who have committed criminal acts. In deciding a criminal case, a judge must decide fairly and must comply with the applicable rules.

Case number 105 / Pid.Sus / 2019 / PN.slw, judging from the judge's consideration and decision-making process, if associated with the Mackenzie Theory then the judge uses balance theory, scientific theory and ratio decidendi theory. According to the authors, the judge was judged appropriately using balance theory, scientific theory and ratio decidendi theory.

The judge's decision is expected to provide a sense of justice, both procedural justice and substantive justice, while considering all related matters such as aspects of education, aspects of humanity, aspects of law enforcement,

aspects of expediency and aspects of legal certainty.

4 CONCLUSION

The judge in handing down the decision of case No. 105 / Pid.Sus / 2019 / PN.Slw uses two considerations, namely juridical considerations and non juridical considerations. Law theory used by judges in handing down verdicts is balance theory, scientific theory and ratio decidendi theory in order to get a fair verdict in handing down the verdict.

5 DECLARATION OF CONFLICTION INTERESTS

Authors declare that there is no conflicting interest in this research and publication.

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