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Legal Analysis and Case Studies On Conspiracy In Narcotics Crimes

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Abstract: This research aims to determine the offense of Criminal Conspiracy in Narcotics Crimes and to determine the basis of the judge's considerations in Decision Number 120/Pid.Sus/2023/PN Mks. This research uses normative legal research methods, and a discussion of this thesis is written as a legal research method. The use of normative research methods in research efforts and writing this thesis is based on the suitability of theory with the research methods required by the author. The results obtained are presented descriptively. 1.) Law Number 35 of 2009 regulates sanctions against narcotics abusers who commit narcotics crimes. Dangerous Conspiracy is the act of two or more people conspiring to commit, carry out, assist, participate in, order, recommend, facilitate, provide consultation, become members of a narcotics crime organization, or organize narcotics crimes. Any person who offers to sell, sells, buys, receives, becomes an intermediary in buying and selling, exchanges, or delivers Class I Narcotics without right or against the law shall be punished with life imprisonment, a minimum imprisonment of five years, and a maximum imprisonment of twenty years, and fines of one billion rupiahs and ten billion rupiahs. 2) The Panel of Judges in case no. 120/Pid.Sus/2023/PN Mks sentenced the defendant to six years in prison and a fine of Rp. 1,000,000,000.00 for conspiracy to buy and sell narcotics class I. The defendant's actions were considered aggravating because he rejected the government's efforts to eradicate narcotics and drug abuse, as well as reducing his polite attitude at trial. The defendant has never been convicted; this shows that the defendant's actions are in line with the goals of the criminal justice system.

Keyword: Crime, Conspiracy, Narcotics.

INTRODUCTION

Indonesia, as one of the most densely populated countries in the world, is, of course, a potential market for narcotics. Very many narcotics distribution networks have been found in a country, including Indonesia, which, after being traced, turned out to have an international network (Hakim, 2007).

Indonesia, which was originally a transit or marketing country, is now one of the destination countries and has even become an exporter or producer country for narcotic pills.

Calling Indonesia a narcotics-producing country can be avoided with strict supervision by the security forces in Indonesia (Djoko & Riyadi, 1986).

Narcotics crime is everywhere, penetrating all levels of society, from the upper middle class to the lower middle class. Narcotics crime or crime is seen as a crime that is worrying in various countries, including Indonesia. Narcotics crime is an extraordinary crime that is transnational, this crime does not only cover the national area. This is due to the circulation of narcotics, which can be said to be very extensive, covering international territory. Narcotic abuse can certainly endanger human life if consumed in the wrong way, which can result in death for the user (Eleanora, 2022).

The Indonesian government has attempted a set of regulatory instruments to prevent and follow up on narcotics abuse crimes (Mubarrak, 2022). With the emergence of problems of abuse and illicit trafficking of narcotics, regulations are needed in the form of new laws that do not have multiple interpretations and must be based on devotion to God Almighty, benefits, balance, and harmony. Finally, Finally, Law Number 22 of 1997 concerning Narcotics was updated to Law Number 35 of 2009 concerning Narcotics. This law regulates efforts to eradicate narcotics crimes through the threat of imprisonment, fines, life imprisonment, and the death penalty. This law also governs use for medical and health purposes and regulates medical and social rehabilitation. In this way, it is hoped that this law will be able to minimize the crime of narcotics abuse and trafficking in Indonesia.

The change in the law is because narcotics crimes are no longer carried out individually but involve many people together, even forming an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels (Sujono & Daniel, 2008).

Narcotics crimes based on the descriptions above can be categorized as extraordinary crimes. Therefore, the threats imposed for narcotics crimes must, of course, be more severe compared to other crimes. It is not surprising that Law Number 35 of 2009 concerning Narcotics does not only ensnare one perpetrator but also people who participate in committing narcotics crimes because narcotics crimes are committed jointly through the offense of criminal conspiracy (*Samenspanning*).

At this time, narcotics crimes are not only carried out individually or individually but also involve many people who are carried out together, even forming an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels. (Jainah et al., 2022) . In its development, narcotics crimes not only involve many people, but some preparations can be said to be very thorough by making various agreements to carry out narcotics crimes, whether distributing, selling, using, and so on. The agreement referred to in a narcotics crime is also called a criminal conspiracy to commit a narcotics crime. Evil conspiracy as the *lex generalis* is regulated in Article 88 of the Criminal Code (KUHP).

The definition of criminal conspiracy in the Narcotics Law is a form of expansion of the meaning of the provisions of criminal conspiracy in Article 88 of Law Number 1 of 1946, known as the Criminal Code (KUHP); the meaning of criminal conspiracy in Article 88 of the Criminal Code is: "It is said that there is a conspiracy evil, if two or more people have agreed to commit a crime."

Meanwhile, what is meant by an evil conspiracy in Law Number 35 of 2009 concerning Narcotics, stated in Article 1 number (18) is:

"Evil conspiracy is the act of two or more people who conspire or agree to commit, assist, participate in committing, order, recommend, facilitate, provide consultation, become members of a narcotics crime organization, or organize a narcotics crime."

Conspiracy in narcotics crimes is classified as the formation of an evil conspiracy, namely starting from the intention, the presence of 2 (two) people agreeing or conspiring to

commit a criminal act. Regarding actions that can be held accountable as evil acts or as criminal acts, in this case, whether the form of evil conspiracy is the basis for expanding the offense or *tatbetandaus denungs ground* is seen as a stand-alone offense alongside the main offense attached to it as if the offense had been considered complete. Furthermore, to be proven, it must be *expressly* stated in the article of the law; if it is not stated, it is a tacit element or *stilzwijgend element* (Farid & Hamzah, 2006).

Furthermore, the criminal threat for criminal acts as stipulated in Article 132 paragraph (1) is determined to be the same by the provisions as intended in these articles, meaning that criminal conspiracy is punished the same as the main penalty for the completed offense. There is no difference in criminal threat, even if it is carried out by attempt or criminal conspiracy. In the Criminal Code (KUHP), probation is only punished lighter than the basic sentence except for several criminal offenses. This shows the specificity of Law Number 35 of 2009 concerning Narcotics.

Legislative provisions governing narcotics issues have been drafted and implemented. However, crimes involving narcotics still need to be reduced (Arafat et al., 2023). Even though some several laws and regulations can be used to trap perpetrators of narcotics crimes who carry out criminal conspiracy, law enforcement officials still feel that there is confusion regarding the regulation of laws and regulations relating to the issue of criminal conspiracy in narcotics crimes because basically The existing rules are still general. Therefore, there must be clear regulations regarding the crime of evil conspiracy.

In practice, narcotics crimes often involve two or more perpetrators, using elements of agreement or conspiracy. The perpetrators are usually involved in the procurement, smuggling, distribution, and sale of narcotics, all of which are carried out illegally (Tahir & Baruadi, 2023). Proving the existence of a criminal conspiracy begins at the investigation stage, where investigators look for suspected criminal incidents to determine whether an investigation can be carried out. Evidence is sought to explain a crime or find a suspect. The investigation process ends with a judge's pronouncement of a criminal act (verdict) before a trial, which shows the evidentiary process in a criminal case (Bahri, 2009).

In case Number 120/Pid.Sus/2023/PN Mks, M. Idham Saputra Bin Zainuddin Tahir was found guilty of committing an evil conspiracy to commit a Narcotics crime, namely without rights or against the law, accepting and being an intermediary in the case. sale and purchase of class I narcotics in the form of plants weighing more than 1 kg or more than 5 trees." The panel of judges sentenced Tahir to six years in prison and a fine of Rp. 1,000,000,000.00 (one billion rupiah), with the provision that if the fine is not paid, it will be replaced by an additional four months' imprisonment.

Lk initially called Tahir.AHMAD DEVIS to borrow his identity to order marijuana. He sent his KTP via WhatsApp to DEVIS, who called him two weeks later to ask for help collecting the package. DEVIS promised him Rp. 500,000 (five hundred thousand rupiah) and one package of marijuana for Tahir to consume. Based on laboratory examination, the evidence found on Tahir and Tahir contained THC (*Tetrahydrocannabinol*) and was registered in Narcotics Group I Serial Numbers 8 and 9. Article 114 Paragraph (2) of the Law regulates and threatens the defendant's actions. RI No.35 of 2009 concerning Narcotics in conjunction with Article 132 paragraph (1) of the Law. R.I

In this case, the perpetrators worked together to commit narcotics crimes as regulated in the Narcotics Law. In the case of a criminal act, of course, there are elements of an act that can be categorized as having committed a criminal act accompanied by the perpetrator being liable for punishment or applying a criminal offense to the criminal act committed. It would be interesting to carry out a deeper study regarding the criminal conspiracy for which the perpetrators were charged and the responsibility of each perpetrator in committing a criminal act, as in the case above.

Based on the brief description above, the author is interested in researching the Application of the Criminal Law of Conspiracy in Narcotics Crimes and the basis for the judge's considerations in Decision Number 120/Pid.Sus/2023/PN.

METHOD

This research is legal research, which, according to F. Sugeng Istanto, is research that is applied or applied specifically to legal science (Iswanto, 2007). Morris L. Cohen said *legal research is finding the law governing activities in human society* (Marzuki, 2005). The author decided to use normative legal research methods and write a discussion of this paper as a legal research method based on the suitability of theory with the research methods required by the author.

The normative juridical approach is based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research. This approach is also known as the library approach, namely by studying books, statutory laws, and other research-related documents (Sunggono, 2006). Referring to approaches in legal research, the author uses a statutory approach (*statute approach*) and a conceptual approach (Sunggono, 2006). This approach is a search for meaning in legal terms contained in legislation; in this way researchers gain an understanding of new meanings of legal terms and test their practical application by analyzing legal decisions (Fajar & Achmad, 2010).

In normative legal research, library materials are basic materials, in research science, generally called secondary legal materials (SMS Soekanto, 2006). Legal materials are collected through procedures for identifying official documents, library books, statutory regulations, scientific papers, articles, and documents relating to research materials, and classifying and systematizing legal materials by analyzing Evil Conspiracies in Narcotics Crime. Therefore, the data collection technique used in this research is a literature study. The next literature study was carried out by reading, studying, taking notes, and reviewing library materials related to Evil Conspiracies in Narcotics Crimes.

In normative legal research, data processing is carried out systematically on written legal materials. Systematization means classifying legal materials to facilitate analysis and construction work (Soekanto, 1987). Activities carried out in the analysis of normative legal research data using data obtained regarding Evil Conspiracies in Narcotics Crimes are then analyzed descriptively, namely analysis of the legal materials obtained, then discussion, examination, and grouping into certain sections to be processed into data. Information.

RESULTS AND DISCUSSION

Offense of Criminal Conspiracy in Narcotics Crimes

According to criminal law, evil conspiracy, *samenspanning*, or *conspiracy* is not an initial act of execution (*begin van uitvoeringshandelingen*) as intended in the offense of attempt. Evil conspiracy if carried out by two or more people who promise to commit a crime. In this case, the agreement is between them to commit a crime. Conspiracy can be punished even though there has been no attempted or preparatory act. This means that a person who has agreed to commit a crime can already be punished even though the crime has not been carried out (Prodjodikoro, 2012).

Evil conspiracy (*same spanning*) is a plan and agreement to carry out a crime; it can be called a criminal act that is agreed upon, planned, and before it is carried out. In Article 88 of the Criminal Code, "it is said that there is an evil conspiracy, if two or more people have agreed to commit a crime."

Referring to the definition of Evil Conspiracy as stated in Article 88 of the Criminal Code, it can be concluded that "an evil conspiracy is deemed to have occurred as soon as two or more people reach an agreement to commit the crime." Here, criminal conspiracy is a

criminal act in itself, meaning that a person can be declared to have committed the crime of criminal conspiracy by agreeing to commit criminal acts as mentioned in Articles 104, 106, 107, and 108 of the Criminal Code.

Based on the Criminal Code, criminal conspiracy does not apply to all criminal acts. Still, it only applies to crimes in the case of treason, state security, assistance to the enemy in times of war, and crimes that endanger public security for people or goods (Indrayanto, 2022). The articles that regulate are as follows:

1. Article 110, committing the crime of treason according to Articles 104, 106, 107 and 108. Punishable by crime based on the main articles.
2. Article 116, committing a crime according to Article 113 and Article 115, is punishable by a maximum imprisonment of one year.
3. Article 125, committing a crime as intended in Article 124, is punishable by a maximum sentence of six years.
4. Article 139c, committing a crime as formulated in Article 139a and Article 139b, is punishable by a maximum imprisonment of one year and six months.
5. Article 187 ter, committing one of the crimes mentioned in articles 187 and 187 bis, is punishable by a maximum prison sentence of five years.

Apart from this evil conspiracy contained or regulated in the Criminal Code, evil conspiracy is also included in the narcotics law, namely Law No. 35 of 2009. In this law, evil conspiracy is explained in Article 1 number 18, which states that: "Malicious conspiracy is an act of two or more people who conspire or agree to commit, carry out, assist, participate in committing, order, recommend, facilitate, provide consultation, become members of a narcotics crime organization, or organize a narcotics crime."

Suppose you pay attention to the definition in Article 1 number 18 above. In that case, it is grammatically broader than the definition in Article 88 of the Criminal Code, which only covers when two or more people have agreed to commit a crime. Meanwhile, Article 1 number 18 includes conspiring or agreeing to commit, carry out, assist, participate in committing, order, recommend, facilitate, provide consultation, become a member of a Narcotics crime organization, or organize a crime.

The Narcotics Law expands the definition of criminal conspiracy compared to the Criminal Code. This includes "conspiring or agreeing to commit, assist, participate in, carry out, order, recommend, facilitate, provide consultation, become a member of a narcotics crime organization, or organize a criminal act." These words are not contained in the Criminal Code but have their own meaning in the law. However, what is meant by "helping to carry out, participating in carrying out, recommending" does not have a special meaning in the law. Therefore, the equivalent word in the definition of criminal conspiracy in the Narcotics Law should mean "referring as intended" in the Criminal Code. This creates a weakness for narcotics and gives rise to differences in interpretation.

The definition of a narcotics crime has been expanded from the term "criminal conspiracy" in the Criminal Code. What "conspiring or agreeing to commit, assist, participate in, carry out, order, recommend, facilitate, provide consultation, become a member of a narcotics crime organization, or organize a criminal act"? This broadens the understanding of moderate narcotics crimes that many people are increasingly committing.

Different from the Criminal Code, criminal conspiracy, as regulated in Law Number 35 of 2009 concerning Narcotics, regulates the same provisions by the provisions regulated in the criminal offense articles. In this case, the crime of criminal conspiracy in the Narcotics Law punishes the same as a completed offense, and there is no difference in criminal threats, even though they are carried out with evil conspiracy (Sujono & Daniel, 2008).

If linked to the provisions of Article 132 paragraph (1) of Law no. 35 of 2009, the criminal threat phrase contained is "the perpetrator shall be punished with the same prison

sentence in accordance with the provisions referred to in these Articles." As written previously, the articles contained in Article 132 paragraph (1) are 17 (seventeen) articles with different criminal threats.

Historically, conspiracy or evil conspiracy (*same spanning*) includes situations where the elements of a criminal act are not fulfilled by the perpetrator, whose efforts to fulfill them have begun in earnest so that the legislator wants the initial efforts to be declared a criminal act (Rommelink, 2003).

Andi Hamzah wrote that special criminal law refers to criminal law regulations listed outside the Criminal Code, which can be called separate (criminal) laws or criminal law outside codification or non-codification (Syamsuddin, 2011).

Regarding article 114 paragraph (2) in conjunction with article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, we can see that the elements are as follows:

1. Element Everyone;
2. Unauthorized or unlawful elements of offering to sell, sell, buy, receive, or become an intermediary in buying and selling, exchanging, or handing over Class I Narcotics;
3. Elements of committing an evil conspiracy to commit a narcotics crime;

Regarding the theory of punishment, the legal system in Indonesia adheres to a combined theory that integrates elements from the theory of retaliation and the theory of purpose. The theory of retaliation is regulated in Article 10 of the Criminal Code. On the other hand, the objective theory is reflected in the types of punishment regulated in the Criminal Code, such as imprisonment and confinement. Based on its focus, this combined theoretical concept can be grouped into three groups. First, a combined theory focuses on aspects of retribution but with the principle that punishment should not exceed the limits necessary to maintain order in society. Second, a combining theory emphasizes the protection of social order, with the principle that punishment should not be more severe than the suffering experienced by the condemned. Third, a combining theory considers that these two aspects must be emphasized equally in punishment (Rangkuti, 2023).

In the relative theory of punishment, Leonard aims to prevent and reduce crime. Punishment must be intended to change the behavior of criminals and other people who have the potential or are likely to commit crimes. The aim of criminal law is social order, and to enforce social order, punishment is needed (Prasetyo & Barkatullah, 2005).

Connected with the theory of punishment, based on the absolute theory, also known as the theory of retribution, which focuses on the idea that a person can be punished for committing a criminal act. This theory places more emphasis on past events rather than considering future impacts. Punishment is seen as an appropriate form of retaliation or punishment given to individuals who commit criminal acts. Therefore, this theory assumes that the basis of criminal law or the purpose of punishment is to provide retribution against criminals (Ishak, 2023). Absolute theory is a theory of the purpose of punishment, which is still often applied in imposing sanctions on criminals by prioritizing the aspect of retaliation (Rivanie et al., 2022).

The relative theory of punishment, also known as the practical theory, states that punishment has a purpose based on certain benefits, not just to repay the perpetrator's actions. Crime is not only a form of retaliation or retaliation against perpetrators of criminal acts but also has goals that provide benefits. The biggest advantage of giving punishment to perpetrators is preventing criminal acts from occurring (Fardha, 2023). Relative theory aims to achieve to protect that society and lead to social welfare. The purpose of punishment is not retaliation against the perpetrator, where sanctions are emphasized on their purpose, namely to prevent people from committing crimes (Irmawanti & Arief, 2021).

Punishment is imposed not because people commit crimes but so that people do not commit crimes. So this theory is often also called goal theory (*utilitarian theory*) (Priyanto, 2009). The main characteristics or characteristics of relative theory (*utilitarian*), namely: (Priyanto, 2009)

1. The aim of crime is *prevention* ;
2. Prevention is not the final goal but only a means to achieve a higher goal, namely the welfare of society;
3. Only legal violations that can be blamed on the perpetrator (for example, intentionally or culpably) qualify for a crime;
4. Punishment must be determined based on its purpose as a tool for crime prevention;
5. Criminal law looks forward (prospective), punishment can contain an element of reproach, but the element of retaliation cannot be accepted if it does not help prevent crime in the interests of the welfare of society.

The description of the benefits above, when linked to the objectives of punishment in Article 132 paragraph (1) of Law no. 35 of 2009, then is studied regarding perpetrators of attempts or criminal conspiracy who are punished with the same prison sentence by the articles violated. One of the elements of an effort (and this also applies to criminal conspiracy) is the perpetrator's intention. Hazewinkel Suringa, Simons, and van Hamel define intention as synonymous with intentionality. Even more than that, intention is equated with intentionality in various forms. This opinion is based on *the adage in atrocious delictis puncture affectus licet non sequitur effect*, which means that for crimes, deliberate attempts can be punished even if the goal is not achieved.

The question arises as to whether the punishment imposed on the perpetrator is equivalent to the act achieving its goal, based on whether criminal attempts and evil conspiracy constitute *delictum sui generis*. Differences in theoretical views of criminal law experts influence the interpretation and application of the Public Prosecutor's indictment regarding Article 132 paragraph (1) of Law No. 35 of 2009. Gustav Radbruch believes that positive law is the opposite of justice and must prioritize justice. Good law must guarantee legal certainty and benefit; often, legal certainty and justice and benefit conflict.

From the perspective of justice, crime is a formal offense that focuses on actions, in contrast to material offenses that focus on consequences. Both attempt and conspiracy are abstract offenses, with malicious conspiracy being a form of preparatory offense. These violations pose a real danger but do not meet the elements of an attempted breach.

Especially for evil conspiracy, it is a form of abstract offense, which is a preparatory offense. This preparatory offense is intended for offenses that cause concrete danger but do not fulfill the elements of a trial offense. This can be seen clearly in Article 88 of the Criminal Code. While the trial is closer to the formulation of the intended offense, the offense has one additional element, namely that the offense was not completed because of something beyond the perpetrator's will. Thus, an attempt or an evil conspiracy is not seen as a *delictum sui generis* or an independent offense but as an imperfect offense (*onvolkomen delictsvorm*). Neither attempt nor conspiracy is considered a *delictum sui generis* or an independent offense but an imperfect offense. Therefore, the perspective of in-depth justice for perpetrators of criminal conspiracy in Article 132 paragraph (1) must be seen from the division of criminal law, namely special criminal law.

Basic Legal Considerations for Court Decision Number 120/Pid.Sus/2023/PN Mks

The role of a judge as the party who imposes criminal sanctions does not ignore the laws norms and regulations that exist in society. This is regulated in Article 5 Paragraph 1 of Law of the Republic of Indonesia No. 48 of 2009 concerning Principles for the Implementation of Judicial Power, which states "Judges and Constitutional Justices are

obliged to explore, follow and understand the legal values and sense of justice that exist in society" (Pohan & Hidayani, 2020).

The decision handed down by a judge must include elements of "legal justice" and "moral justice." What is meant by "legal justice" is the principle that court decisions must not deviate from the provisions of the law, but "moral justice" implies that court decisions must provide a sense of justice to all parties involved. Furthermore, it is important to establish in Indonesian positive law the existence of standard rules regarding "minimum sentences," which are regulated in the substance of the decision, as regulated in Article 197 paragraph (2) letter f of Law Number 8 of 1981 concerning the Criminal Procedure Code.

The Panel of Judges in Decision Number 120/Pid.Sus/2023/PN Mks has handed down a decision on the defendant named M.Idham Saputra Bin Zainuddin. The defendant was found guilty of committing a narcotics crime, conspiracy to sell and buy class I narcotics. The court sentenced him to six years in prison and a fine of Rp. If the fine is not paid, 1,000,000,000.00 (one billion rupiah), with an extension of four months. The Defendant's actions are as regulated and punishable by Article 114 Paragraph (2) in conjunction with Article 132 (1) of the Law. R.I. No.35 of 2009 concerning Narcotics.

The defendant was found guilty of attempting or conspiring to commit a Narcotics crime, namely offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over class I Narcotics, namely plants or trees that weigh more than one kilogram or more than five trees. He was sentenced to seven years in prison and a fine of Rp. 1,000,000,000 (one billion rupiah) and eighteen months imprisonment with a reduced prison term. The evidence includes a purple JNE package containing suspected marijuana, a receipt with receipt number SIA001506841264, a cellphone with SIM card number 085399555212, and two Samsung Galaxy J2 Prime cellphones. All goods were confiscated for the state. The court determined that the defendant must pay court costs of Rp. 5,000,- (five thousand rupiah).

The defendant's legal advisor asked the Panel of Judges to consider the defendant's defense note, submitted on May 3, 2023. The defense note argued that the defendant was not proven to possess, store, control, or supply class I narcotics, a type of marijuana plant. The defense also argued that the defendant only helped as a friend and had not received the promised wages. The defense also noted that this was the first time the defendant had received marijuana plant-type narcotics. The defense also pointed out that the defendant was still a student, had not been the target of an operation, was aware of and regretted his actions, behaved politely, was still young, and had never been convicted.

The Defendant's attorney asked the Panel of Judges to reduce the demands of the Public Prosecutor who tried the Defendant based on the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The judges were asked to consider and reduce the sentence to be imposed on Tahir, considering the defendant's role in the case for the sake of justice and truth. If the Panel of Judges has a different opinion, the Defendant's Attorney asks for the fairest possible decision.

M.Idham Saputra and Lk.Ahmad Devis Kudubun was arrested on September 21, 2022 for committing a malicious conspiracy to commit a narcotics crime. They are involved in offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or handing over class I narcotics, namely plants that weigh more than 1 kilogram or more than 5 trees.

Initially, Lk telephoned the defendant. Ahmad Devis borrowed his identity to order marijuana. The defendant sent his KTP via WhatsApp to Lk. Ahmad Devis. Two weeks later, Lk. Ahmad Devis informed the defendant that the marijuana package had been delivered and promised Rp. 500,000 (five hundred thousand rupiah) and one package of marijuana for the defendant to consume.

On September 21, 2022, the defendant took the package from a JNE officer waiting on the roadside. Upon arrival, officers from the South Sulawesi Province National Narcotics Agency (BNNP) arrested the defendant. The defendant was questioned by BNNP officers; both South and the defendant admitted that the items were narcotics, specifically a type of marijuana plant belonging to Lk.Ahmad Devis.

Evidence confiscated during the arrest included a purple JNE package wrapped in clear plastic with clear duct tape containing materials/leaves suspected to be marijuana, a cellphone with SIM card number 085399555212, a receipt for the sender's identity and recipient's address, and one branded cellphone. The defendant's Samsung Galaxy J2 Prime.

Defendants M.Idham Saputra and Lk. Ahmad Devis Kudubun was charged with possessing class I narcotics, including marijuana plants. The inspection report from the BNN Baddoka Makassar Laboratory revealed that one purple JNE packet contained leaf material suspected to be a type of marijuana narcotic weighing 3,085 grams. Two plastic wrappers were set aside, one containing marijuana-type narcotic material, which was to be destroyed, and the other containing material/leaves suspected to be marijuana-type narcotics with a gross weight of 5 grams, which were used for laboratory tests and trial evidence. Laboratory examination concluded that the evidence found on the defendant contained THC (Tetrahydrocannabinol) and was registered in Narcotics Group I Serial Numbers 8 and 9 as regulated in Law Number 35 of 2009 concerning Narcotics.

Regarding the case above, we can see the elements in Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. We can see that the elements are as follows:

1. Element Everyone;
2. Unauthorized or unlawful elements of offering to sell, sell, buy, receive, or become an intermediary in buying and selling, exchanging, or handing over Class I Narcotics;
3. Elements of committing an evil conspiracy to commit a narcotics crime;

Regarding the aspect of every person, the Panel of Judges considers that what is meant by every person is an individual or legal entity (corporation) or anyone as a legal subject who can be held accountable for all their actions before the law.

Observations of the Panel of Judges and the acknowledgment of the Defendant at trial, it turns out that he is in good physical and mental health and is not mentally disturbed, and there are no circumstances found that would be a reason to erase or eliminate the Defendant's responsibility as a legal subject, either to the Defendant himself or to the nature of the criminal act with which he is accused as regulated in article 44 of the Criminal Code, the Defendant must be seen as a legal subject (natuurlijk person) who is capable of being responsible for his actions before the law, that in this way this element has been legally and convincingly fulfilled according to the law;

Elements without rights or against the law offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over Class I Narcotics in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) trees or in the form of not a plant weighing 5 (five) grams.

"Without rights or against the law" is a legal subject or perpetrator of an act that is not by his or her rights, obligations, or authority, or is contrary to applicable legal provisions in terms of offering to sell, sell, buy, accept, become an intermediary in buying and selling, exchanging or handing over Class I Narcotics. These acts are alternative, and if one of these acts is proven, then that element has also been proven. Class I narcotics are non-plant narcotics, both synthetic and semi-synthetic, which are used in limited quantities for the development of science and not for therapy. They have a high potential to cause dependency, as regulated in Attachment I to Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.

Witness Ahmad Devis Kudubun Bin Djamaluddin asked the defendant to take a package containing marijuana weighing 3,085 grams, with the promise of a reward of Rp. 500,000. The evidence of marijuana containing THC (Tetrahydrocannabinol) is registered in Narcotics Group I Serial Numbers 8 and 9 and is regulated in Law Number 35 of 2009 concerning Narcotics. Class I narcotics can only be used for scientific development and cannot be used for therapy. Based on the defendant's actions are considered incorrect or against the law from these facts. Evidence weighing more than 1 kilogram grams meets the minimum weight regulated in Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics. Therefore, these elements have been fulfilled legally and convincingly according to the law.

Regarding the element of committing an evil conspiracy to commit a narcotics crime, in accordance with the provisions of Article 1 number 18 of Law Number 35 of 2009 concerning Narcotics, the definition of an evil conspiracy is the act of two or more people who conspire or agree to carry out, carry out, help, participate in as well as committing, ordering, recommending, facilitating, providing consultations, becoming a member of a Narcotics crime organization, or organizing a Narcotics crime.

It is known that Lukas Sober asked witness Ahmad Devis Kudubun to borrow his friend's address and name to receive the package at JNE. Luke. After that, Ahmad Devis Kudubun called the defendant, M. Idham Saputra, to borrow his identity and become the recipient of the JNE package. Ahmad Devis Kudubun Bin Djamaluddin promised M. Idham Saputra he would receive the package and hand it over to Ahmad Devis Kudubun Bin Djamaluddin. This gave rise to an evil conspiracy between the defendant and witness Ahmad Devis Kudubun Bin Djamaluddin to commit this criminal act. These elements have been proven legally and convincingly according to the law.

The Panel of Judges decided that all elements of the Public Prosecutor's first indictment had been legally and convincingly proven. For several reasons, the defendant's attorney asked for leniency or the fairest possible decision. These include not being proven to own, store, control, or supply class I narcotics, only helping as a friend without receiving the promised wages, first time receiving marijuana plant narcotics, student status, and not being the target of the operation. Realizes and regrets his actions, has good manners in court, is still young, likes helping his family, and has never been convicted.

The defendant, who knew he was going to receive marijuana, continued to carry out his actions. The defendant did not find reasons and justifications to eliminate legal responsibility for his actions during the trial. The Panel of Judges thought that the defendant should be found guilty of committing the criminal offense in the first indictment and should be sentenced to a criminal sentence commensurate with his actions because the evidence presented at the trial was clear and convincing. Other allegations from the Public Prosecutor were not considered.

Before the Panel of Judges sentenced the defendant, they considered aggravating and mitigating factors. Aggravating circumstances include the defendant's actions being contrary to the government's efforts to eradicate narcotics and drug abuse, as well as potentially harming the mental health of other people who use these drugs. Mitigating factors include the defendant's polite attitude at trial and admitting his actions honestly. The defendant has never been convicted. The verdict is in line with the quality of the defendant's actions and the criminal justice system's goals. This system considers not only absolute punishment but also relative/objective theory, fear/deterrence theory, and reparation/benefit theory. Law enforcement aims to achieve justice, legal certainty, and the benefits of the law itself. The decision is based on these considerations and is consistent with the quality of the defendant's actions and the criminal justice system's goals.

CONCLUSION

Law Number 35 of 2009 concerning Narcotics explains that a dangerous conspiracy is an act of two or more people who conspire or agree to commit, carry out, assist, participate in, order, recommend, facilitate, provide consultation, become members of a narcotics criminal organization, or organizing narcotics crimes. Any person who, without right or against the law, offers to sell, sells, buys, receives, becomes an intermediary in buying and selling, exchanges, or delivers Class I Narcotics shall be punished by life imprisonment, a minimum imprisonment of five years, a maximum of twenty years, and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah). Article 132, paragraph 2 of the Narcotics Law explains that the acts as intended in Articles 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 129, are carried out in an organized manner. , the maximum prison sentence and the fine are increased by one-third.

Based on the legal considerations of the Panel of Judges in case no. 120/Pid.Sus/2023/PN Mks, considering aggravating and mitigating factors. Aggravating circumstances include the defendant's actions being contrary to the government's efforts to eradicate narcotics and drug abuse, as well as potentially harming the mental health of other people who use these drugs. Mitigating factors include the defendant's polite attitude at trial and admitting his actions honestly. The defendant has never been convicted. This decision is in line with the quality of the defendant's actions and the objectives of the criminal justice system. The defendant was found guilty of committing a narcotics crime, conspiracy to sell and buy class I narcotics. The court sentenced him to 6 (six) years in prison and a fine of Rp. If the fine is not paid, 1,000,000,000.00 (one billion rupiah), with an extension of 4 (four) months.

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