E-ISSN : 2986-3155, P-ISSN : 2986-3856
DOI: https://doi.org/10.38035/gijlss.v2i2
Received: July 14th, 2024, Revised: July 21st, 2024, Publish: Agustus 02nd, 2024

Juridical Analysis of Death Penalty Decisions in Drug Cases in Article 114 Law Number 35 of 2009 (Case Study Decision Number 145/PK/Pidsus/2016)

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Abstract: Narcotics crimes damage the future of the nation's generations in various aspects of life. Research result; By rejecting the request for review from the applicant for review/convict: FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT; means that it does not fulfill the provisions of Article 263 paragraphs (2) and (1) of the Criminal Procedure Code, then based on the provisions of Article 266 paragraph (2) letter a of the Criminal Procedure Code, the request for review from the Judicial Review Applicant/Convict is due to the Judge's error or obvious error in the Judex Facti and Judex Juris decisions. , nor can it be justified because in the Judex Facti and Judex Juris decisions. The judicial review by the Supreme Court is in accordance with the provisions of Article 270 Jo. Article 271 of the Criminal Procedure Code. This is supported by the President's rejection of clemency submitted by convicts on death row for narcotics crimes in accordance with applicable provisions which also automatically stipulate that the court decision has permanent legal force (inkracht van gewijsde). This has also provided legitimacy for the Prosecutor to carry out executions in accordance with the provisions of Article 270 Jo. Article 271 of the Criminal Procedure Code. Author's Suggestions; That the decision can be used as jurisprudence for cases that are similar and have similarities to this case. There is a need to re-evaluate legal findings regarding state officials that provide legal certainty in the field.

Keywords: Review of the Legal Consequences of the Establishment of the Death Penalty in Narcotics Cases.

INTRODUCTION

Background of the problem

The negative impact of narcotics crimes on human life is very devastating. Tends to damage the future of the nation's generations in various aspects of life. Both social, economic, cultural, political and defense and security aspects. Aspects related to human character, to the field of education, starting from campuses, high schools, to elementary school students, even among artists, executives and entrepreneurs have also been filled with dealers of the devil's powder, thus, the government together with all Community members must seriously try to overcome the threat of the dangers of narcotics. It is very worrying that in the future the young

generation of this nation will not be able to escape the influence of the threat of narcotics if it is not handled seriously by all parties, especially the condition of society which has been affected by narcotics pollution, which will eventually lead to the destruction of the realm of behavior and national character.

Narcotics crimes can develop with the sole aim of business but only to gain material gain. However, it is actually used as a strategic step in destroying a nation. The impacts that can be caused are individual, group losses and even crimes that can harm the state. It is starting to undermine the integrity of the nation and if it becomes more rampant, then the condition of a nation's national resilience will get worse.

The state must be present to see the reality of the dangerous threat of narcotics to the safety of the nation. On the other hand, he sees weaknesses in legal regulations and law enforcement against narcotics dealers or manufacturers has not been optimal and effective. It is time for the maximum punishment in the form of the death penalty and confiscation of wealth if necessary to be applied without bargaining. The government and law enforcement must be firm so that Indonesian citizens are protected from the evils of drug businessmen.

Regulation of narcotics crimes in Indonesia is based on Law Number 35 of 2009 concerning Narcotics. This law regulates criminal threats for perpetrators of narcotics crimes, one of which is against narcotics dealers. The provisions governing criminal sanctions for narcotics dealers are regulated in Article 114 where in paragraph (2) it is stated that one of the criminal threats is the death penalty.

The application of the death penalty imposed on narcotics dealers in Indonesia based on Law Number 35 of 2009 concerning Narcotics is in accordance with the positive law in force in Indonesia, namely in accordance with Article 10 of the Criminal Code. While imposing the death penalty for perpetrators of the crime of narcotics trafficking is still very appropriate at this time, this is done to break the chain of narcotics crimes and save the nation's future generations as well as save the Indonesian nation and state from the destruction caused by narcotics abuse.

The problem that is becoming a polemic at the moment is that there are no clear rules governing the time limit for carrying out executions for death row convicts in Indonesia, so this can create legal uncertainty for death row convicts themselves, especially death row convicts in cases of narcotics trafficking. In the future, the imposition of the death penalty for narcotics traffickers still needs to be implemented because this is in accordance with the laws and regulations in force in Indonesia. The execution should be carried out immediately after the person on death row has taken all legal measures within the 5 (five) year time limit. Apart from that, accountability for the refusal to review the death penalty decision for convicts in narcotics cases in decision No.145/PK/Pid.Sus/2006 is still not a strong basis for carrying out death executions.

METHOD

Types of research

The type of research used in this research is descriptive research, namely a type of research that describes or explains existing regulations that currently apply as positive law and aims to understand the application of legal norms to facts.

Problem Approach

The problem approach used in this research is a normative juridical approach, namely an approach to law as a norm or rule and principles that apply in a law and its application to society, in the sense of looking at the reality that exists in society to identify factors. -factors that played a role in the legal event in question.

Based on the type of research used to conduct this thesis research, it is normative juridical research, the problem approach used by researchers is a statutory approach related to the

problem being researched as well as through interview research instruments related to the problem being researched.

Data and Data Sources

The data required in this legal research is primary data and secondary data. In this research, the legal materials used are:

1. Primary Legal Materials.

Namely legal materials related to binding legal materials related to hierarchical laws and regulations. Other legal materials used are legal materials that are authoritative, meaning they have authority. Laws, other legal regulations.

2. Secondary Legal Materials.

Namely legal materials in the form of all publications about law that are not official documents. These publications are in the form of text books about law written by legal experts, journals, papers, articles and others related to what is being researched.

3. Tertiary Legal Materials.

Namely legal materials that provide meaningful instructions and explanations for primary and secondary legal materials. Such as legal dictionaries and legal encyclopedias.

Data Collection Techniques

The collection of primary, secondary and tertiary legal materials is carried out using library research and field research which is based on problem topics that have been formulated and then classified based on their hierarchy to be studied comprehensively, such as:

1. Library Research (library research).

   Library research is needed to obtain secondary data, namely data obtained from studying documents or library materials consisting of primary, secondary and tertiary legal materials.

2. Field research (field research).

   Field studies are carried out with the researcher's direct involvement in the research objects and subjects which are the focus of data analysis related to the problem being studied. In field studies, researchers go directly to the field where the object of this research is located, namely at the research location. This is done to directly see objective conditions in the field.

3. Interview (interview).

   Interviews are a way of collecting data obtained through several interview guides.

Data analysis technique

Analyzing data is a critical step in research because in research researchers must determine the analytical pattern that will be used. Based on the consideration of the use of the steps described above, the data that has been collected is then analyzed by researchers qualitatively, which is a way to produce descriptive data. The data analyzed starts from the qualitative results, then classifying the data can be formulated based on the research problem, then conclusions are drawn.

In analyzing this research data, the researcher used qualitative descriptive analysis, namely an analysis that explains or describes the current findings, then relates them to the reality that occurs in society and finally draws conclusions.

RESULT AND DISCUSSION

Legal Responsibility for Death Penalty Decisions in Drug Crimes

Definition of Death Penalty

Punishment or crime is "an unpleasant feeling (miserable) imposed by a judge with a sentence on a person who has violated the criminal law". The death penalty is a form of

punishment to protect public interests of a societal nature because the crime is very dangerous and is considered irreparable. In accordance with the development of modern criminal law which formulates punishment to protect the interests of society and the interests of individuals who are victims of crime and criminals. Roeslan Saleh said: "The death penalty is the heaviest type of punishment according to our positive law. For most countries, the death penalty only has a cultural-historical meaning. This is said, because most countries no longer include this death penalty in the Constitution Criminal Law.

Popular arguments to justify the death penalty are as follows:

a. It is more effective than various other existing types of punishment, because it has a deterrent effect in the crime of murder.
b. More economical than other punishments.
c. To prevent public action against these criminals.
d. It is a punishment that can only be determined with certainty, because murderers who are sentenced to life imprisonment often receive pardon.

Those who adhere to the death penalty say that the death penalty is more certain and certain than imprisonment, because imprisonment is often followed by the possibility of the convict escaping or being pardoned or being granted acquittal. The death penalty has an important role in ensuring that criminals are unable to commit crimes again and society will no longer feel disturbed and there is no longer anything to fear about criminals because their bodies have been buried so they will no longer be able to commit evil acts, as well as other people. others will be afraid to commit crimes that are punishable by the death penalty.

Implementation of the Death Penalty for Narcotics Crime Perpetrators According to Law

The death penalty is regulated in several laws and regulations in Indonesia, especially for narcotics crimes for which a judicial review application is submitted against the Constitution. Based on Constitutional Court Decision Number 2-3/PUUV/2007. According to the author, the death penalty for narcotics crimes has been stated in articles and laws, but on the other hand, there is a consideration by the panel of judges regarding cases of the death penalty for narcotics crimes that the death penalty in the Narcotics Law does not contradict human rights and the right to life as stated in The 1945 NRI Constitution is because the guarantee of human rights and the right to life in the 1945 NRI Constitution does not adhere to absolute principles.

The death penalty in Indonesia is contained in Article 10 of the Criminal Code, Article 11 of the Criminal Code. In terms of the death penalty for perpetrators of narcotics crimes, it was originally contained in Article 113 paragraph (2), which was intended for perpetrators of illicit narcotics trafficking themselves. Because in general in Indonesia, the influence of narcotics among society is very disturbing both in terms of health, economics, social, and even what arises in the future from the effects of addiction to narcotics use and even results in paralysis or death. So the death penalty is applied to those involved in illicit narcotics trafficking on a national and international scale. The death penalty is always introduced as an alternative to other basic crimes.

If the facts stated are convincing and prove that the defendant is guilty of committing a crime that is punishable by death, then the judge can impose another alternative sentence. In special circumstances the death penalty can be suspended until the president provides execution tips. If seen from the purpose of punishment, the death penalty has not been able to function, seen from the purpose of punishment it has not been able to function as the main means of regulating, ordering and improving society. So it would be a good idea for the government to formulate criminal law legislation, especially the death penalty and whether the death penalty is still needed in narcotics laws in the future.

The benchmark for the state to maintain the death penalty is so that the public pays attention that the government does not want any disturbance to public peace. Final punishment

needs to be maintained to enforce the law against the actions of criminals who threaten public order.

What needs to be discussed is how to carry out the death penalty as regulated in PNPS No. 2 of 1964 concerning Procedures for Implementing the Death Penalty Sentenced by Courts in the General and Military Justice Environment. Article 1 states that the application of the death penalty is carried out by being shot to death, which changes the initial implementation of the death penalty according to Article 11 of the Criminal Code.

This is done as an effort to ensure the existence of the death penalty with the benchmark that the death penalty by hanging is more inhumane because it causes longer pain and suffering to the convict while hanging. However, when shot, the benchmark is that the convict does not need to feel the pain for a long time so that he can undergo the death penalty without suffering first like other methods of applying the death penalty.

Some of the existing views are concrete thoughts as part of the reality of the death penalty in Indonesia, including:

a. Views that do not agree with the implementation of the death penalty in Indonesia, Prof. JE Sahetapy expressed his disagreement with the death penalty with the aim of carrying out revenge and intimidation. According to him, punishment should aim at "liberation". The death penalty is mentally and spiritually liberating, but it does not mean giving up the old way of thinking and lifestyle. Roeslan Saleh stated first, that a court verdict by a judge cannot be corrected if one day it is discovered that there was an error in examination or other means. The second point, referring to the Pancasila philosophy, can be stated that the death penalty is contrary to humanity.
b. Views agree with the implementation of the death penalty in Indonesia Prof. Yusril Ihza Mahendra (MenHum 1999-2004) has an agreeing opinion, because for him extraordinary crimes by the state cannot be tolerated, because they relate to state peace. Achmad Ali gave his opinion that the death penalty is very necessary and is applied through strict specifications and selectivity. Specifications for extraordinary crimes. And selective means that the convict must be in accordance with the facts of the trial to convince the judge that the perpetrator is him. As in their decision the constitutional court judge concluded, the death penalty in the Narcotics Law at that time did not contradict human rights and the right to life as in the 1945 Constitution of the Republic of Indonesia because the guarantees of human rights and the right to life in the 1945 Constitution of the Republic of Indonesia did not adhere to absolute principles.

Natural law is law that is born from the activities of human reason (Suseno, 1987: 187). In relation to guaranteeing human rights in Indonesia, it is regulated in the 1945 Constitution of the Republic of Indonesia, Article 28A-Article 281 paragraph (1), however, a person's human rights are also limited in the state constitution, in Article 281 paragraph (2).

Based on the article above, punishment is often seen as something that does not violate human rights because it is considered to be in accordance with the contents of the state constitution. The death penalty is ultimately seen as a tool to protect all Indonesian people from dangerous criminals in certain crimes or special crimes (Lex Specialis).

In the matter of the death penalty, although many parties oppose it, there are still many who support it. Pros and cons always arise. Every time a death sentence is carried out, every time there is a debate. Arguments for rejecting/abolishing the death penalty (abolitionists) usually revolve around moral/religious arguments, namely that only God gives life to humans and only He has the right to revoke it.

There is also an argument for the low effectiveness of the death penalty. Another argument that is often raised by those opposing the death penalty is the fact that the criminal justice system is still weak and has many shortcomings which are very likely to produce innocent victims who must be sentenced to death. Another important argument against the death penalty is that the death penalty is contrary to human rights, especially the right to life. In

Duham, the right to life is clearly stated. This has also been clearly explained in the post-amendment 1945 Constitution. The right to life is constitutionally guaranteed.

In this case, those who support it in Indonesia, the death penalty is still threatened for a number of crimes, including premeditated murder, drugs and terrorism. In 2007, there was a judicial review of the death penalty in Law No. 22 of 1997 concerning Narcotics several years ago. A number of arguments against the death penalty were presented in the judicial review, some of which have been discussed above. However, the Constitutional Court, with a number of judges dissenting, rejected the judicial review and stated that the death penalty was not contrary to the constitution because the 1945 Constitution did not adhere to absolute human rights. A number of arguments often put forward by parties who support the death penalty (retentionists) are victim protection arguments, normative arguments, crime prevention, and so on.

Supporters state that the law should not only side with the human rights of criminals, but also the rights of crime victims. The victim's right to life which has been taken away by the perpetrator (for example in cases of terrorism and premeditated murder) must also be taken into account. When a number of parties criticized and asked Indonesia to stop the death penalty, a number of parties rejected it with normative arguments, namely that the death penalty is currently still a positive law and when a convict is sentenced to death by a court, this must be implemented to ensure certainty. In fact, Indonesia does not need to submit to pressure from other countries because it must uphold its sovereignty in the legal field.

To find a middle way, the debate over the pros and cons of the death penalty is likely to continue, both in the academic world, parliament, government, law enforcement and society at large. What is our legal politics regarding the death penalty amidst the endless debate for and against? In fact, although a number of countries still recognize the death penalty in their legal framework, in reality, they no longer impose it (moratorium). This could be one of our choices. Currently there are still a number of laws that contain the death penalty, but law enforcers may not use it because the death penalty is always threatened alternatively and is not the sole punishment. So, the prosecutor's office can take prosecutorial politics not to seek the death penalty against the defendant.

Likewise, the Supreme Court can make policies for judges below it not to impose the death penalty. Another way is as in the Criminal Code Bill which is currently being discussed in the DPR, which is known as the alternatives to death penalty approach. So, death row convicts do not immediately undergo the death penalty, but there is a certain period (for example 10 years), if the convict is proven to show improvement and fulfills a number of conditions, the sentence changes to life imprisonment. The approach taken by the drafters of the Criminal Code also makes the death penalty not a basic punishment, but rather a special and alternative basic punishment. Also with many conditions for dropping it. Whatever the name, the goal is to avoid the death penalty being imposed. I myself see it as very logical if society still supports the death penalty, especially if we read the news of a drug dealer importing millions of ecstasy pills or kilos of narcotics into Indonesia which will poison the nation's children and in turn will destroy the future and kill hundreds, even thousands of generations. our youth, or when we read the news of the massacre of a family, rape and sadistic murder of the victims. However, on the other hand, errors in our judicial process are always possible.

In a situation like this, it would be better for those who support the death penalty not to assume that those who oppose the death penalty are those who support the perpetrator and do not support the victim and efforts to overcome crime. Both the pros and cons actually reject crime and try to protect victims, but have different approaches. Will crimes such as drugs, terrorism, premeditated murder or other crimes be reduced by the death penalty? This is still always a question mark because the data is less than convincing. So, the choice is to improve crime prevention using a penal policy and non-penal policy approach together, as well as increasing professionalism, law enforcement capabilities and the community's ability to fight

crime. Use punishment as wisely as possible. A life sentence can be imposed, it doesn't have to be the death penalty, because once it is carried out, if there is a mistake, who will bring them back to life

Factors Causing the Death Penalty for Narcotics Crime Perpetrators

The death penalty for narcotics dealers is contained in article 114 paragraph (2) and article 119 paragraph (2). Apart from being the heaviest punishment, it turns out that until now the death penalty is the most debated punishment by both legal experts and criminologists. This is none other than because of the death resulting from the death penalty. The division into two groups, both those who support and those who reject the death penalty.

Those who support the death penalty argue that the death penalty is an appropriate, fast and effective means of resolving measures to punish and protect society. Meanwhile, groups who reject the death penalty argue that this punishment clearly violates human rights (hereinafter referred to as human rights), especially the right to life. So this debate has had a real impact, where there are many countries that have abolished the death penalty from their criminal legal system.

It should be noted that the death penalty applied in Indonesia does not merely reduce or even eliminate human rights altogether. However, in its implementation it is more about the state's obligation to protect its citizens, and every deviant action carried out by citizens and that is contrary to existing laws, they will receive punishment as stated in the law which is carried out based on the norms and rules of legislation.

The death penalty for narcotics traffickers is regulated in article 114 paragraph (2) and article 119 paragraph (2). In article 114 paragraph (2) it is explained that: In the case of the act of offering for sale, selling, buying, being an intermediary in buying and selling, exchanging, handing over or receiving Class I Narcotics as intended in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and the maximum fine as intended in paragraph (1) plus 1/3 (one third).

In the article above, it is explained that a narcotics dealer can be sentenced to death if he possesses class I narcotics in plant form weighing more than 1 (one) kilogram or more than 5 (five) trees or in non-plant form weighing 5 (five) grams. Regarding the classification of narcotics, it is always updated based on developments in existing narcotics through the Minister of Health Regulation (Permenkes), this is explained in the Regulation of the Minister of Health of the Republic of Indonesia Number 22 of 2020 concerning Changes in the Classification of Narcotics.

Meanwhile, narcotics dealers are also subject to the death penalty if they are proven to be class II narcotics dealers, this is contained in article 119 paragraph (2) which reads: In the case of acts of offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging, or hand over Narcotics Category II as intended in paragraph (1) weighing more than 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and the maximum fine as intended in paragraph (1) plus 1/3 (one third). In the article above it is explained that a narcotics dealer can be sentenced to death if he has class II narcotics in non-plant form weighing more than 5 (five) grams.

Regarding class II narcotics, it is also explained in the Regulation of the Minister of Health of the Republic of Indonesia Number 22 of 2020 concerning Changes in the Classification of Narcotics. In this case, there are 91 types of class II narcotics. Among others are:

1. Morphine, is processed raw opium or opium and is an alkaloid found in opium in the form of white powder;
2. Methadone, is a synthetic opioid that works longer and is more effective than morphine;

3. Pethidine, is an opioid class of analgesic drug that functions to treat pain;
4. Fentanyl, is also a class of opioids that functions as a pain reliever; and, 97 other types of derivatives.

For narcotics that are classified as class II narcotics, this is a type of narcotic that is useful in the world of health as medicine. However, it is not the first choice for treatment, this type is only the last choice with limited and very strict terms of use, because this type of narcotic has a very strong dependency power. Apart from that, this narcotic is also used in the development of science and technology. The reasons why narcotics in various types are strictly prohibited and must be avoided except in emergency conditions such as use in the health sector are:

1. Narcotics cause the electrolyte balance in the body to decrease which results in the body lacking fluids, so if this continues to happen it can result in convulsions in the body, easy hallucinations, more aggressive behavior and tightness in the chest, and if this continues in the long term it can cause damage. on the brain;
2. Narcotics also cause the brain and nerves to be forced to work beyond their actual limits in unnatural circumstances;
3. The use of narcotics in excess of the dose will result in the body becoming too relaxed which will lead to drastically reduced consciousness, impaired consciousness, easily confused, and changes in behavior, and in the long term can result in memory loss;
4. Narcotics cause dirty blood circulation and the heart is caused by substances from narcotics which have very strong effects, so that the heart works beyond its normal limits;
5. Narcotics cause breathing to not work properly and cause fatigue;
6. Narcotics cause very heavy dependence on narcotics, both spiritual and physical, to the point where serious conditions arise due to drug withdrawal;
7. Narcotics cause death due to use exceeding the dose that the body can accept.

This is the reason why narcotics dealers are given heavy sentences, considering that these dealers are the people who distribute these illicit goods to various places in Indonesia, causing damage to society and the nation's young generation. So Law Number 35 of 2009 concerning Narcotics regarding sanctions for narcotics dealers in article 114 paragraph (2) and article 119 paragraph (2) has prepared the heaviest sanction, namely the death penalty.

Legal Responsibility for Death Penalty Decisions in Drug Crimes in Case Decision Number 145/Pk/Pidsus/2016

Position Case

Examining the special criminal case at the judicial review examination has decided as follows in the case of the convict:

Name : FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT;
Place of birth : Surabaya;
Age/date of birth : 34 Years / 18 July 1977;
Gender : Man;
Nationality : Indonesia;
Residence : Happy Road No. 14 Block D RT.005/RW.07 Menteng Village, Cengkareng District, West Jakarta;
Religion : Islam;
Work : Self-employed;

the Supreme Court; Read the indictment of the Prosecutor/Public Prosecutor at the West Jakarta District Prosecutor's Office as follows:

PRIMALR :

That he is the Defendant FREDl BUDIMAN alias BUDI bin H. NANANG HIDAYAT together with 1. HANI SAPTA PRlBOWO bin HM GATOT EDI. 2. Defendant CHANDRA HALlM alias AKlONG bin TINGTONG, 3. MUHAM MAD MUHTAR alias MUHAMAD MOEKTAR, 4. ABDUL SYUKUR alias. UKUNG bin MEIJl, 5. ACHMADI alias. MADl bin SUKYAN, 6. TEJA HARSOYO alias RUDI. 6 tried separately) and SUPRIADI bin SAMIN (tried separately at the Military Court) on Friday 25 May 2012 at approximately 19.00 WIB at least at other times in 2012, located on Jalan Kamal Raya, Cengkreng Timur District, West Jakarta or at least in other places which are still included in the jurisdiction of the West Jakarta District Court which is without rights or against the law in terms of acts of offering for sale, selling, buying, being an intermediary in buying and selling, exchanging, handing over or receiving class I Narcotics, as intended in paragraph (1) in the form of non-plants, experiments or criminal conspiracy to commit criminal acts of narcotics and narcotics precursors of Ecstasy type amounting to 1,412,476 (one million four hundred twelve thousand four hundred seven six grams.

Public Prosecutor's Indictment and Charges

Considering that from the statements of witnesses, the Defendant's statements related to evidence, as well as the Minutes of Laboratory Examination of evidence and documents in the case file, the following legal facts were obtained:

- That the Defendant was arrested in the Bon at the Cipinang Detention Center, East Jakarta by National Narcotics Agency (BNN) officers, on Saturday, June 30 2012 and at that time four (4) cellphones and IDR 17,300 in cash were confiscated from the Defendant. 000; (seventeen million three hundred thousand rupiah);
- That the Defendant was arrested in connection with the capture of 1 (one) trailer truck, which was carrying a container which turned out to contain, apart from aquarium equipment (Fish Tank), 1,412,476 (one million four hundred and twelve thousand four hundred and seventy six) ecstasy. grain weighing 380,996.9 (three hundred eighty thousand nine hundred ninety six point nine) grams near the Kamal Cengkareng Toll Gate, West Jakarta;
- That the ecstasy was sent from China by YU TANG and WONG CHANG SHUI to be distributed in Indonesia by the Defendant, because the Defendant has a large market share in big cities in Indonesia, including Jakarta, Surabaya, Bandung, Medan, Bali, Makasar to Papua;
- Whereas initially 500,000 (five hundred thousand) pieces of ecstasy would only be sent from China, but it turned out that 1,412,476 (one million four hundred and twelve thousand) ecstasy would be sent, the excess if the Defendant succeeded in selling, he would be given 10% and if he was not willing, the ecstasy would be sent to Singapore;
- That the plan to bring Ecstasy from China by Chandra Halim was discussed with the Defendant in the Defendant's room at the Cipinang Detention Center, because the Defendant and CHANDRA HALIM were both prisoners held at the Cipinang Detention Center, and CHANDRA HALIM asked the Defendant who could help with the goods. the goods leave Tanjung Priuk Port, because they will be sent by ship;
- That is why the Defendant discussed it with HANI SAPTA PRIBOWO, who shares a room with the Defendant at the Cipinang Detention Center, because the Defendant knew that Hani Sapta Pribowo had a container loading and unloading company at Tanjung Priuk Port before becoming a prisoner, and HANI SAPTA PRIBOWO stated that he had a friend who used to work there. for that it was named ABDUL SYUKUR;
- That next, HANI SAPTA PRIBOWO contacted ABDUL SYUKUR and said that a friend of his was going to bring in goods from China and asked for ABDUL SYUKUR's help to take them out of Tanjung Priuk Port, which ABDUL SYUKUR welcomed and

then conveyed the order to SUPRIYADI, namely Primary Management Officer of the Kalibata Cooperative (Primkop Kalta) belonging to BAIS TNI which has offices in Tanjung Priuk;

- That then a misunderstanding arose between ABDUL SYUKUR and SUPRIYADI, on the one hand with CHANRA HALIM regarding the process of releasing the goods and the costs of the expenditure, so that calls and SMS from ABDUL SYUKUR and SUPRIYADI were often not responded to by CHANDRA HALIM;
- Whereas CHANDRA HALIM conveyed this to the Defendant and asked him to take part in taking care of his release from Tanjung Priuk Port;
- That because the Defendant then actively took care of taking it out of the port, the defendant contacted ABDUL SYUKUR to discuss the process of removing it from Tanjung Priuk Port;
- Whereas ABDUL SYUKUR said that the costs of removing the container from the port and the costs while the goods were at the port were IDR 90,000,000.00; (ninety million rupiah) and the Defendant ordered his subordinate named ACHMADI alias MADI to take care of it;
- That therefore it was ACHMADI alias MADI who communicated with ABDUL SYUKUR as the Defendant's liaison;
- Whereas the Defendant then ordered ACHMADI to deliver money for the costs of processing the ecstasy from Tanjung Priuk Harbor to ABDUL SYUKUR in the amount of Rp. 90,000,000.00; (ninety million rupiah) in two stages, where in the first stage it is IDR 30,000,000; (thirty million rupiah) which was handed over by ACHMADI alias MADI at the Padang Restaurant in Tanjung Priuk and the second one approximately 1 (one) week later at the same place amounting to Rp. 60,000,000.00; (sixty million rupiah);
- Whereas when handing over the money, ABDUL SYUKUR first asked ACHMADI who the BOSS of the goods was and ABDUL SYUKUR stated his desire to meet, then ACHMADI conveyed this to the Defendant;
- That then the Defendant contacted TEJA HARSOYO to together with ACHMADI meet ABDUL SYUKUR;
- Whereas when ACHMADI was going to deliver the second tranche of money which was Rp. 60,000,000.00 (sixty million rupiah), ACHMADI contacted TEJA and then exchanged telephone calls and TEJA came to ACHMADI's house on Jalan Kembang Shoes, Senen-Central Jakarta;
- That at his house on Jalan Kembang Shoes, Senen-Central Jakarta, ACHMADI had prepared a rental car to go with TEJA to meet ABDUL SYUKUR in Tanjung Priuk. GRATITUDE where TEJA is driving the car;
- That ACHMADI, TEJA and ABDUL SYUKUR met again at the Padang restaurant. ACHMADI first handed over money for the process of releasing the goods and containers from China, then TEJA introduced himself by the name RUDI as instructed by the Defendant, after that ACHMADI handed over additional money for the process of releasing the containers. 60,000,000.00 (sixty million rupiah) wrapped in black plastic and import documents wrapped in a brown envelope;
- That what ACHMADI alias MADI handed over to ABDUL SYUKUR was all the Defendant's money which came from the sale of shabu belonging to the Defendant by his subordinate named SAMUEL;
- That the money that ABDUL SYUKUR received from ACHMADI amounting to Rp. 85,000,000.00 (eighty five million rupiah) was handed over by ABDUL SYUKUR to SUPRIYADI at Primkop Kalta BAIS TNI for the purposes of arranging the release of the container containing the aquarium (Fish Tank) and ecstasy and Rp. ,5,000,000.00 (five million rupiah) taken by ABDUL SYUKUR;
- Whereas the entry of these goods into Indonesia was imported by the Primkop BAIS

TNI Cooperative, where in the invoice document it was stated that the goods in the container were Fish Tanks (Aquariums) and their accessories;

- That in order to accommodate the goods in the container, the Defendant, via telephone communication, asked his younger brother, JOHNI SUHENDRA, to find a warehouse to rent, but JOHNI SUHENDRA ordered his employee, MUHTAR alias TAR, who had also known the Defendant for a long time, and then the Defendant communicate by telephone with the MUHTAR alias TAR;
- That in the end MUHTAR alias TAR got a warehouse to rent on Jalan Kamal Raya 17 Cengkareng, West Jakarta with a rental price of IDR 28,000,000.00 (twenty eight million rupiah).
- Whereas on Friday, May 25 2012, SUPRIYADI informed ABDUL SYUKUR, that the container had been able to leave the port on that day, then Abdul Syukur informed Achmadi by telephone and then also informed Achmadi by telephone, ordering MUHTAR ALIAS TAR to wait at the Kamal toll exit and guided him to the warehouse he rented;
- That at around 19.00 WIB, on Friday, May 25 2012 the trailer truck carrying the container arrived at the Kamal Cengkareng exit toll gate, West Jakarta, and MUHTAR on a motorbike approached the truck while giving a signal with a wave of his hand to follow it and At that time, MUHTAR AKA TAR, the driver and carnet of the trailer truck carrying the container were arrested by BNN officers, then together with the container truck they were taken to the BNN office in Cawang;
- Then, at the BNN office, the container truck was dismantled in the presence of the BNN leader, MUHTAR alias TAR, the container truck driver named RONI and the carnet named ASEP, then items were found in the form of aquarium equipment and accessories and 12 boxes containing ecstasy which after being counted using a machine apparently contained 1,412,476 ecstasy pills;
- That for the services of handling the release of goods and ecstasy in containers imported from China, the Defendant, with an agreement between YU TANG AND CHANDRA HALIM alias AKIONG, will receive 10% and the remainder will be sold by the Defendant at Discotheques in big cities in Indonesia, including Jakarta, Surabaya , Bandung, Medan, Makassar and Papua with separate calculations and services that are also calculated separately between the Defendant, CHADRA HALIM and YU TANG, because the Defendant has a large market and market share in Indonesia;
- That for these actions the Defendant was not protected by other authorities;
- That from the results of the laboratory examination of evidence of ecstasy confiscated from the TGHU container 0683898/20, the color was red, as stated in the Minutes of Laboratory Examination Number 73F/VI/2012/UPT Drug Testing Lab, dated 7 June 2012 from the UPT of the BBN Drug Testing Laboratory, states that it does contain MDMA/(+)n, a-diametic 3,4 (methylene dioxy) phenethylamine and is listed in Group 1 Serial Number 37 attachment to Law Number 35 of 2009 concerning Narcotics;

Considering, that in order to prove the guilt of the Defendant as the Defendant, the Prosecutor/Public Prosecutor, the facts as mentioned above need to be connected to the elements of the article which the Prosecutor/Public Prosecutor has charged against the Defendant, whether the Defendant's actions fulfill the elements of the article stated whether the Prosecutor/Public Prosecutor was charged or not;

Considering, that the Prosecutor/Public Prosecutor has been charged with Subsidiarity by the Defendant, where in the Primary Indictment the Defendant is charged with violating the provisions of Article 114 paragraph (1) jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, in the Subsidiary Indictment the Defendant was charged with violating the provisions of Article 113 paragraph (2) jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, while in the More Subsidiary Indictment the

Defendant was charged with violating Article 112 paragraph (2) jo. Article 132 paragraph (1) Law Number 35 of 2009 concerning Narcotics;

That from our explanation in point 3) above once again shows clearly and unambiguously that in fact Dear. Bro. Fredi Budiman (Petitioner for Judicial Review) was actually not proven to have fulfilled the elements contained in Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics, especially the element of "Attempt or Evil Conspiracy Without Rights and Unlawful Buying, Selling and "Being an intermediary in the sale and purchase of Class I narcotics in the form of non-plants weighing 5 grams or more" should only be a judicial review applicant or a malicious conspiracy without rights and against the law to import or distribute Class I narcotics from China belonging to SDR. WONG CHANG SHUI entered Indonesia and carried out an evil conspiracy to remove the ecstasy type narcotics from the Tanjung Priuk port as stated in Article 113 paragraph (1) of Law Number 35 of 2009 concerning Narcotics;

It can be concluded that the actions of the Petitioner for Judicial Review can only be proven and fulfill the elements of "Attempt or Evil Conspiracy Without Rights and Unlawful Importing, or distributing Class I Narcotics" as stated in Article 113 paragraph (1) of Law Number 35 of 2009 regarding Narcotics, is based on the consideration of the Honorable Panel of Judges of the Republic of Indonesia, the cassation level of the Honorable Panel of Judges of the West Jakarta District Court in the a quo case as explained by us in points (3) and point (4) above, apart from that based on the consideration of the Honorable Panel of Judges a quo above (point 3) above) we can conclude by the Judicial Review Petitioner that the actions of the Honorable. Bro. FREDI BUDIMAN can only be proven and fulfill the elements of "Attempt or Evil Conspiracy Without Rights and Against the Law to import, or distribute Class I Narcotics" as stated in Article 113 paragraph (1) of Law Number 35 of 2009 concerning Narcotics for reasons as follows below:

1. There is no mental attitude or intention on the part of the Applicant for Judicial Review to carry out an evil conspiracy to buy and sell the Ecstasy Narcotics. What existed at that time was the mental attitude or intention of the Judicial Review Applicant regarding how to remove Ecstasy Type Narcotics in containers from Tanjung Priuk Port;
2. The ecstasy type of narcotics does not belong to the Judicial Review Applicant/Br. FREDI BUDIMAN but belongs to Br. WONG CHANG SHUI;
3. That the person who planned to bring the ecstasy from China was Br. CHANDRA HALIM is not Mr. FREDI BUDIMAN, Applicant for Judicial Review/Br. FREDI BUDIMAN only helped with the process of removing the ecstasy from the port;
4. That at the time of the arrest of the Judicial Review Applicant, Yth. Bro. FREDI BUDIMAN, namely by being booked at the Cipinang Detention Center, East Jakarta, by officers from the National Narcotics Agency (BNN), on Saturday, June 30 2012, there was not a single piece of evidence in the form of Ecstasy Narcotics on his person. Bro. FREDI BUDIMAN, which is in the person of the Honorable. At the time of his arrest, FREDI BUDIMAN had 4 (four) cellphones and cash amounting to Rp. 17,300,000.00 (seventeen million three hundred thousand rupiah);
5. That Dear. Bro. FREDI BUDIMAN's role was essentially just being asked for help by Mr. CHANDRA HALIM how to remove a container containing ecstasy type drugs containing 1,412,476 ecstasy pills from Tanjung Priuk Port, Jakarta, and if successful, you will get a reward of 10%;

That from the above conclusion once again it is clear and clear that it is based on the legal facts at the trial of the Hon. Bro. Fredi Budiman (Petitioner for Judicial Review) is actually not proven to have fulfilled the elements contained in Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics, especially the element of "Attempt or Evil Conspiracy Without Rights and Unlawful Buying, Selling And Become an Intermediary in the Buying and

Selling of Class I Narcotics in Non-Plant Form Weighing 5 Grams or More"; The Applicant for Judicial Review should have been Mr. Bro. FREDI BUDIMAN was only declared guilty and fulfilled the elements of "Attempt or Evil Conspiracy Without Rights and Unlawful Importing, or distributing Class I Narcotics" from China belonging to SDR. WONG CHANG SHUI entered Indonesia and carried out an evil conspiracy to remove the ecstasy type narcotics from Tanjung Priuk Port as stated in Article 113 paragraph (1) of Law Number 35 of 2009 concerning Narcotics; That therefore, from our explanation of points 1) to point 5) above, it turns out that it clearly and unambiguously shows that there was an "Mistake in the Decision of the Honorable Supreme Court of Judges Number 1093 K/Pid.Sus./2014, which was decided on Monday, Date 08 September 2014, jo Decision of the Honorable Panel of Judges of the DKI Jakarta High Court Number: 389/PID/2013/PT. DKI. which was decided on Monday, 25 November Number: 2267/Pid.Sus/ 2012/PN.Jkt.Bar, which was decided on Monday, 15 July 2013, because he was mistaken or made a mistake in stating that Dear. SDRs. "FREDI BUDIMAN was proven to have violated the provisions of Article 114 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics, because the applicant for review should only be proven to have violated Article 113 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics," therefore We ask Your Excellency the Supreme Court of Justice of the Republic of Indonesia. who is handling the case for the application for judicial review that we, the applicant for judicial review, have submitted is to be able to accept our first reason/objection as an error as implied in Article 263 paragraph (2) letter c of the Criminal Procedure Code, and to cancel the decision of the Honorable Supreme Court of Justice Jo. The decision of the Honorable Panel of Judges at the Jakarta High Court Jo. West Jakarta District Court's decision on the a quo case and self-adjudication with the verdict as per the petition which we will submit at the end of this Judicial Review Memorandum;

That therefore, our objections above are sufficient reasons to cancel the Decision of the Honorable Panel of Judges of the Supreme Court Number 1093 K/Pid.Sus/2014, which was decided on Monday, September 8 2014 in conjunction with the Decision of the Honorable Panel of Judges of the DKI High Court Jakarta Number: 389/PID/2013/PT. DKI, which was decided on Monday, November 25 2013 jo. Decision of the Honorable Panel of Judges of the West Jakarta District Court Number: 2267/Pid.Sus/2012/PN.Jkt.Bar. which was decided on Monday, July 15 2013, a quo requesting Judicial Review and furthermore we request that the Honorable Supreme Court of the Republic of Indonesia, which handles this judicial review case, by adjudicating itself be pleased to acquit the Petitioner for Judicial Review from all charges and demands Dear. Bro. The Public Prosecutor is pleased to be able to change the death sentence of the Petitioner for Judicial Review to a lighter sentence or at least change the DEATH sentence of the Petitioner for Judicial Review to a temporary sentence for a certain period of time and/or change it from a DEATH sentence to a life sentence;

Considering, that based on the reasons for the review of the Judicial Review Petitioner/Convict, the Supreme Court is of the opinion:

That reason review return from Applicant Review with K-4 cannot be justified, because it compares the sentence imposed on the applicant for reconsideration/convict with that imposed on SUPRIADI in the case at the Jakarta II High Military Court, Number 88 - K/BDG/PMT-II/AU/IX/2013 September 20 2013 is not a new fact and situation, where each convict has different roles and responsibilities as stated with sufficient and correct considerations according to law in the decision.*Judex Facti*and Judex Juris;

That the reason for the review of the Judicial Review Petitioner/Convict is that there are conflicting decisions by comparing the sentences imposed on SUPRIADI cannot be justified because even though the two cases are in the same case, the roles and responsibilities of each Convict are different. For the convict FREDI BUDIMAN alias BUDI bin H. NANANG, his role and responsibilities have been properly and correctly considered in the Judex Facti and Judex Juris decisions;

That the reason for the review of the Judicial Review Petitioner/Convict is the Judge's error or obvious error in the Judex Facti and Judex Juris decisions, nor can it be justified because in the Judex Facti and Judex Juris decisions it has been properly and correctly considered that the Judicial Review Petitioner/Convicted proven legally and convincingly guilty of committing a criminal act as charged in the Primair Indictment in violation of Article 114 paragraph (2) jo. Article 132 paragraph (1) Law Number 35 of 2009 concerning Narcotics;

Considering, that because the reasons for the review of the Judicial Review Applicant/Convict do not comply with the provisions of Article 263 paragraphs (2) and (1) of the Criminal Procedure Code, then based on the provisions of Article 266 paragraph (2) letter a of the Criminal Procedure Code the request for judicial review of the Judicial Review Applicant/Convict must is rejected and determines that the decision requested for review remains valid;

Considering, that because the request for review from the Applicant for Judicial Review/Convict was rejected, and the Convict was still sentenced to the Death Penalty, the case costs for the review examination are borne by the State;

Pay attention to Article 114 paragraph (2) jo. Article 132 paragraph (1) Law Number 8 of 1981, Law Number 14 of 1985 as amended by Law Number 5 of 2004 and second amendment by Law Number 3 of 2009 and other relevant regulations;

Legal Analysis of the Judge's Decision

By rejecting the request for review from the applicant for review/convict: FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT; means that it does not fulfill the provisions of Article 263 paragraphs (2) and (1) of the Criminal Procedure Code, then based on the provisions of Article 266 paragraph (2) letter a of the Criminal Procedure Code, the request for review from the Judicial Review Applicant/Convict is due to the Judge's error or obvious error in the Judex Facti and Judex Juris decisions. , nor can it be justified because in the Judex Facti and Judex Juris decisions.

Because conflicting decisions by comparing the sentences imposed on SUPRIADI cannot be justified because even though the two cases are in the same case, the roles and responsibilities of each convict are different. For the convict FREDI BUDIMAN alias BUDI bin H. NANANG, his role and responsibilities have been properly and correctly considered in the Judex Facti and Judex Juris decisions;

And the Petitioner Review with PK-4 cannot be justified, because it compares the sentence imposed on the applicant for Judicial Review/Convict with that imposed on SUPRIADI in the case at the Jakarta II High Military Court, Number 88 - K/BDG/PMT-II/AU/IX/2013 September 20 2013 is not a new fact and situation, where each convict has different roles and responsibilities as stated with sufficient and correct considerations according to law in the decision.*Judex Facti*and Judex Juris;

On the basis of the discovery of Novum PK I Evidence, the Petitioner for Judicial Review hopes that it will be accepted and used as material for consideration in order to change the criminal sentence to DEATH, Dear. Bro. Fredi Budiman/Applicant for Judicial Review should at least change it to a lighter criminal sentence, or at least object to the applicant for a second review if there are conflicting decisions in the various decisions.

The author considers that the reasons for the review submitted by the applicant for review/convict are basically: "The reason is that there is a new situation which gives rise to a strong suspicion that if the situation had been known at the time the trial was still ongoing the result would have been a verdict of acquittal or a verdict of acquittal. All legal demands or demands from the public prosecutor cannot be accepted or lighter criminal provisions are applied to the case. This new situation is the discovery of evidence of Novum Pk I in the form of: Decision of the High Military Court Ii Jakarta in the name of: Supriadi in case number: 88 - K/Bdg/Pmt-Ii/Au/Ix/2013, which was decided on Friday the 20th September 2013. We

Obtained the Decision on Evidence of Novum Pk I in the A Quo Case from the Website of the Supreme Court of the Republic of Indonesia"

With the discovery of Novum PK I Evidence, the decision in the a quo case above shows the Decision of the Honorable Panel of Supreme Judges of the Republic of Indonesia, in the Cassation Level of the Supreme Court of the Republic of Indonesia Number 1093 K/Pid.Sus./2014, which was decided on Monday, September 8 2014 jo. DKI Jakarta High Court Decision Number: 389/Pid/2013/PT. DKI. which was decided on Monday, November 25 2013, jo. West Jakarta District Court Decision Number:

a. 2267/PID.SUS/2012/PN.JKT.BAR, which was decided on Monday, July 15 2013, especially in the dictum of the decision, it made an error because it had found the Petitioner for Judicial Review guilty with the death penalty;
b. That this Novum PK I Evidence concerns the Decision in the name of SUPRIADI whose role in the a quo Case helped Mr. Fredi Budiman in narcotics precursors include:
    1) In May 2012 the Defendant Supriadi as Head of the Primkop Kalta Branch Office on Jalan Tongkol 2A, 3rd floor, Tanjung Priuk, North Jakarta, to increase profits, changed the B/L (Bill of Lading), invoice and Packing list with the SHENZEN CHUANGXINZHAN logo;
    2) TRADE-GO; LTD which has been stamped with the letters tank and 280 cartons of fish tank accessories from the original also contain the container number TGHU 0683898 20 ft. This was done for the reason of speeding up the work and making a profit of around Rp. 5,000,000.00 (five million rupiah) up to Rp. 10,000,000.00 (ten million rupiah), and apart from changing the B/L (Bill of Lading), Invoice and Packing List, the Defendant also made a Sales Contract which the Defendant signed. personally, by affixing the Kalta Cooperative Primary stamp where Tarduga acted as the Buyer, making this Sales Contract as a completeness for handling the import container TGHU 0883898, and the one who made the Sales Contract was Witness-14, the Defendant also agreed to make a fake red stamp or seal with writing Chinese characters for the purpose of making fake documents;
    3) After the B/L (Bill of Lading), Invoice and Packing List and Sales Contract documents were complete, then the Defendant Supriadi made a power of attorney to arrange DO for the Indonesian Ocean shipping and also a container loan letter TGHU 0683898/20 Feet as well as a container loan letter. TGHU 0683898/20 Feet through the name of Primkop Kalta, and the person who signed the letters was the Defendant at the Primkop Kalta branch office, Jalan Tongkol Tanjung Priuk, North Jakarta, around 15 May 2012 without the knowledge of Witness-1 as the new Chair of Primkop Kalta and Witness-4
    Lt. Col. Chb Aji Wijaya as the old Head of Primkop Kalta. These letters are used to complete the processing of the DO (Delivery Order), without these letters the DO (Delivery Order) cannot be taken and with these letters the person holding them has the right to take the DO (Delivery Order) from the shipping company Disclaimer;

Whereas Supriadi's role in the Novum PK I Evidence mentioned above is not much different from the role of the Petitioner for Judicial Review, this opinion is also stated in the Consideration of the Supreme Court of Judges at the Cassation level a quo in its Decision Number 1093 K/Pid.Sus./2014, which was decided on Monday, September 8 2014 "(page 66 (sixty six) paragraph 2 (two) or part letter g)" which in essence has considered that the Defendant/Petitioner for Judicial Review with the role of witnesses CHANDRA HALIM, WONG CHANG SHUI, ABDUL GRATITUDE, SUPRIYADI, YU TANG;

However, the criminal verdict was very different in that Br. Fredi Budiman was sentenced to DEATH while Supriadi was sentenced to 7 (seven) years in prison and Subsidiary to 1 (one) year in prison;

The comparison between Fredi Budiman and Supriadi's criminal punishment is between heaven and earth (very different);

1. Of course, if the Honorable Panel of Supreme Court Judges of the Republic of Indonesia, at the Cassation level, is of the opinion that in its consideration it is stated that the actions of the Hon. Bro. FREDI BUDIMAN (Petitioner for Judicial Review) is the same as the actions of other Defendants, including one of the Defendants/witnesses. Bro. SUPRIADI, the criminal sentence given to the Petitioner for Judicial Review (Mr. Fredi Budiman) should also be more or less not much different from that of the other Defendant, namely Mr. SUPRIADI. Bro. Supriadi, according to the consideration of the Honorable Panel of Supreme Judges of the Republic of Indonesia., the cassation level of participation of the two Defendants/Convicts (Fredi Budiman and Supriadi) is more or less the same;
2. However, in reality, the punishment that must be borne by the Petitioner for Judicial Review (Dear Mr. Fredi Budiman) is more severe, even comparable to that of the earth and the sky, namely with a penalty of DEATH;
3. Whereas this NOVUM PK I EVIDENCE apart from proving that there was a difference in criminal sentences between Mr. Fredi Budiman with Br. Supriadi, however, also proved that there was a conflict between the decision in the Fredi Budiman case and the decision in another case, namely the SUPRIADI case, including regarding the articles and elements which were declared proven against the convicts Fredi Budiman and Supriadi. There were differences and contradictions. We will explain this in our next objections;
4. That is why, with the discovery of this Novum PK I Evidence, the Petitioner for Judicial Review hopes that it will be accepted and used as material for consideration in order to change the criminal sentence to DEATH, Dear. Bro. Fredi Budiman/Applicant for Judicial Review should at least change it to a lighter criminal sentence, or at least OBJECT TO THE APPLICANT FOR A SECOND REVIEW IF IN THE VARIOUS DECISIONS THERE ARE CONTRADICTIONS.

The second reason that we use as the basis for requesting a review request to the Supreme Court of the Republic of Indonesia through the Registrar's Office of the West Jakarta District Court is if in various decisions there are:

1. A statement that something has been proven;
2. Then the statement regarding the proven proof of the matter or situation is used as the basis and reason for the decision in a case;
3. However, in other case decisions, the things or circumstances that are declared proven are contradictory between one decision and another.

However, the explanation of the existence of the Novum was not accepted by the Panel of Judges as a Judicial Review from the Judicial Review Applicant/Convict: FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT;

Legal Analysis of Refusal to Review Death Sentence Decisions for Narcotics Convicts

Judges are the main actors in law enforcement in court who have more roles than prosecutors, lawyers and clerks. When enforced, the law begins to enter the area of das sein (what is real) and leaves the area of das sollen (what should be). Law is no longer just a series of dead articles contained in a statutory regulation, but has been "brought to life" by a living interpreter called a judge. In deciding a case, the judge must combine three important things, namely, legal certainty, expediency and justice. In this way, the legal considerations that form the basis of the decision will be sound. In deciding a case, the judge must combine three important things, namely, legal certainty, expediency and justice. In this way, the legal considerations that form the basis for drafting decisions will be sound.

However, a judge's decision is not free from errors or mistakes, and it is even impossible to be biased. Therefore, for the sake of truth and justice, it is necessary to allow every judge's decision to be re-examined, so that errors or mistakes made in the decision can be corrected. For every judge's decision, legal remedies are generally available, namely efforts or tools to prevent or correct errors in a decision.

Legal action is the right of the defendant/convict and the Prosecutor/Public Prosecutor which can be used if a party is dissatisfied with the decision given by the court. Because this legal remedy is a right, this right can be used and it is also possible that the defendant/convict and the Prosecutor/Public Prosecutor may not use this right. However, if the right to submit legal action is used by the defendant/convict and the Prosecutor/Public Prosecutor, then the court is obliged to accept it.

Normatively, the Criminal Procedure Code (KUHAP) differentiates legal remedies into two types, first, ordinary legal remedies, namely appeals to cassation as regulated in Chapter XVII Article 233 of the Criminal Procedure Code to Article 258 of the Criminal Procedure Code. Second, extraordinary legal remedy, namely Judicial Review (PK) which is regulated in Article 263 of the KUHAP to Article 269 of the KUHAP, then another extraordinary legal remedy is cassation for legal purposes which is regulated in Article 259 of the KUHAP to Article 262 of the KUHAP. Through the available legal remedies, in order to realize justice, the parties have the right to submit legal remedies if there is a judge's decision that they feel is unfair.

Meanwhile, according to Soenarto Soerodibroto, Herziening is a judicial review (PK) of criminal decisions that have obtained definite legal force containing punishment, which cannot be applied to decisions where the defendant has been acquitted (vrijgerproken). Another definition put forward by Andi Hamzah and Irdan Dahlan is that PK is the right of the convict to ask to correct a court decision that has become permanent, as a result of the judge's error or negligence in handing down his decision.

PK's legal remedy is in principle an extraordinary legal remedy (extraordinary remedy) against court decisions that have permanent legal force (inkracht van gewisjde). PK legal efforts aim to provide legal justice, and can be submitted by litigants in both criminal and civil cases. PK is a convict's right while serving a criminal term in a correctional institution.

The reason PK is categorized as an extraordinary legal remedy is because it has special features, meaning it can be used to reopen (reveal) a court decision that already has permanent legal force. Meanwhile, a court decision that has permanent legal force must be implemented to respect legal certainty. Thus, the PK institution is a legal remedy used to withdraw or reject a judge's decision which already has permanent legal force.

The one-time PK arrangement (as explained in Article 268 paragraph (3) of the Criminal Procedure Code) is a legal formulation that places more emphasis on the principle of legal certainty because the case in question has been tested by a judge through examination at the District Court (PN) to cassation at the Supreme Court (M.A.). A series of material testing stages can be a legal reason that the Supreme Court's decision in a PK has very convincing truth or a very high level of legal certainty. However, if you face a situation where legal justice has not been achieved, then legal action in the form of a PK is an extraordinary effort more than once on the grounds that new evidence (novum) has been found, then the request for a PK does not need to be limited.

The regulation of PK legal action can only be carried out once apart from the provisions of Article 268 paragraph (3) of the Criminal Procedure Code which has been canceled by the Constitutional Court based on Constitutional Court Decision 34/PUU-XI/2013. Apart from that, it is also regulated in Article 24 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, namely "Review decisions cannot be reviewed", as well as Article 66 paragraph (1) of Law Number 14 of 1985 concerning The Supreme Court as amended by Law Number 5 of 2004

and the second amendment by Law Number 3 of 2009, namely, "A request for review can be submitted only 1 (one) time".

Especially in criminal cases, the submission of a PK application can be tested using two principles in legal theory, namely, "lex posteriory derogate lex priory" and "lex superiory derogate lex inferiory". According to the principle of lex posteriory derogate lex priory, in the same hierarchy of regulations, if a polemic occurs, the newest regulation is used. This means that the Constitutional Court's decision, which has a position parallel to the law, should prevail over the previous law (the Judicial Power Law and the Supreme Court Law). Likewise, if you use the principle of lex superiory derogate lex inferiory, which says that lower regulations are defeated by higher regulations, then the Constitutional Court's decision should be higher than SEMA which is only internally binding. By using these two principles, legally the polemic has actually been considered finished and thus what the public and law enforcement officials have followed is the Constitutional Court's Decision which states that a PK application can be submitted more than 1 (one) time.

As with this explanation, to support this statement, it is in accordance with the case that the author researched that;

Reject the request for review from the Applicant for Judicial Review/Convict in CASE DECISION NUMBER 145/PK/PIDSUS/2016: FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT;

1. Whereas determining that the decision requested for review remains valid;
2. Charging court costs for judicial review examinations to the State;

With the rejection of the PK Application, the requested implementation remains in effect, as in the previous Decision. If followed up on Decision No. 1093/K/Pid.Sus/2014 which states thatexamining the special criminal case at the cassation level has decided as follows in the Defendant's case:

Name : FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT;
Place of birth : Surabaya;
U./Date. Birth : 34 Years / 18 July 1977;
Gender : Man;
Nationality : Indonesia;
Residence : Happy Road No. 14 Blok D RT.005/RW.07 Subdistrict Menteng, Cengkareng District, West Jakarta;
Religion : Islam;
Work : Self-employed;

The defendant is not detained because he is still serving a crime (sentence) in another case; In the Judicial Decision, namely;

Reject the cassation petition from the Defendant Cassation Applicant: FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT; Charges the Defendant to pay court costs at the cassation level of Rp. 2,500,- (two thousand five hundred rupiah);

This means that the Defendant's actions have a causal relationship with 1,412,476 (one million four hundred twelve thousand four hundred seventy six) items of Ecstasy evidence or the equivalent of approximately 380,996.9 (three hundred eighty thousand nine hundred ninety six point nine) which was purchased by the Defendant from China from Wong Chang Shui through Yu Thang which will be sold in big cities in Indonesia so that the Defendant's actions constitute a criminal offense in violation of Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law No. .35 in 2009;

That apart from that, the reasons for cassation cannot be justified, because these reasons relate to the assessment of the results of evidence which are of an appreciative nature about a fact. Such reasons cannot be considered in an examination at the cassation level, because an examination at the cassation level only concerns whether a legal regulation was not

implemented, or a legal regulation was not implemented properly, or whether the adjudication method was not carried out in accordance with the provisions of the law, and whether the Court has exceeding the limits of his authority, as intended in Article 253 of the Criminal Procedure Code (Law No. 8 of 1981);

Considering that, based on the considerations above, it is also clear that the Judex Facti decision in this case does not conflict with the law and/or statute, the cassation request must be rejected;

Considering, that because the Defendant's cassation request was rejected and the Defendant was found guilty and sentenced to a crime, the court costs are borne by the Defendant;

Remembering the deed regarding the cassation application Number: 389/PID/2013/PT.DKI jo. Number: 2267/Pid.Sus/2012/ PN.JKT.BAR made by the Deputy Registrar at the West Jakarta District Court which explained that on April 29 2014 the Defendant's Legal Counsel submitted a request for cassation against the decision of the Jakarta High Court. In this case that JUDGE.

1. Declaring that the Defendant, FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT, was legally and convincingly proven guilty of committing the criminal act "Malicious conspiracy to commit criminal acts without rights and against the law of buying, selling and being an intermediary in the sale and purchase of Class I Narcotics, not Plants weighing more than 5 grams" as stated in the Primair Indictment;
2. Sentenced the Defendant FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT to the penalty of "DEATH" and a fine of Rp. 10,000,000,000.- (ten billion rupiah);
3. Also imposing an additional penalty on the Defendant FREDI BUDIMAN alias BUDI bin H. NANANG HIDAYAT, in the form of revoking his rights to use communication tools immediately after this decision is pronounced, even though the Defendant submits legal action in any form (immediately);
4. Determine and order that the Defendant be immediately detained if the Defendant has finished serving a prison sentence in another case he is currently serving before the decision in this case is implemented which has permanent legal force;
5. Determining the order of evidence (in the decision);

Thus, the author considers that the defendant deserves to receive the death penalty, because his actions involved distributing narcotics as regulated in article 114 paragraph (2) of Law no. 35 of 2009, the "element without rights or against the law" is the act of offering for sale, selling, buying, being an intermediary for buying and selling, exchanging, handing over and receiving Class I Narcotics in the form of plants weighing more than 1 kg or more than 5 trees. or in non-plant form weighing 5 grams or more.

On the basis of the discovery of evidence of 1,412,176 ecstasy pills weighing 380,996.9 grams contained in TGHU Container No. 0683898 / 20 feet red heart color, which was arrested and confiscated by officers of the National Narcotics Agency (BNN) near the Kamal Cengkareng Toll Gate, West Jakarta, on Friday, May 25 2012, was purchased by the Defendants FREDI BUDIMAN and CHANDRA HALIM from China to WONG CHANG SHUI through YU THANG which will be sold in big cities in Indonesia such as Jakarta, Surabaya, Bandung, Medan, Bali, Makasar and even Papua, because the Defendant has a large market in Indonesia.

This very evil act has created a young generation contaminated with Narcotics, so that it will destroy the young generation who have a good quality of life. So that they are considered legally adults and free from child protection laws, the author believes that legal breakthroughs, legal reforms, legal creation in cases of death sentences for drug dealers, namely;

1. Legal Breakthrough, namely;

   The decision of the Supreme Court (MA) which annulled the drug kingpin's death sentence is not yet final. However, normatively, this authority does not belong to the constitutional court (MK), so everything goes back to the constitutional court (MK)

which is deemed to have the courage to make legal breakthroughs to fulfill society's sense of justice. The Supreme Court's panel of review judges (PK) acquitted the death sentence based on the Supreme Court's cassation decision. First handed down to the Nigerian family, Hillary K Chimezie, owner of 5.8 kg of Heroi, was freed from the death penalty and changed her sentence to 12 (twelve) years in prison. As for the second case, the Supreme Court acquitted the owner of the ecstasy factory, Hengky Gunawan, from the death penalty to 15 years in prison on August 16 2011. Hengky was sentenced to death by the Supreme Court on appeal. With the reasons of the supreme court in these two decisions that "the death penalty is contrary to article 28 paragraph 1 of the 1945 Constitution and violates article 4 of Law no. 39 of 1999 concerning Human Rights".

2. Legal Reform

In this case, the author concludes that legal reform is the growth, addition, replacement or deletion of a provision, rule or legal principle in legislation in a legal system to make it better and fairer. So in this case the legal reform will focus on the middle ground between the pros and cons of the death penalty in the policy of formulating the death penalty in the reform of Indonesian criminal law. There is a need for a policy on the formation of the death penalty in positive law in Indonesia, so now a comparison will be made with the policy on the formulation of the death penalty in Indonesia in the future. Based on the problems described above, the author feels it is necessary to examine in more depth the policy of formulating the death penalty in the reform of Indonesian criminal law, especially in the formation of the draft national Criminal Code law.

This research was carried out so that Indonesian criminal law in the future will pay more attention to all aspects of the good and bad of the death penalty and formulate it very wisely. The aim of this research is to examine and understand how the death penalty should be formulated in Indonesian criminal law.

3. Creation of law

The death penalty for narcotics convicts is a human rights protection for every society, because narcotics cases are one of the extra ordinary crimes which have caused large losses to the nation materially or immaterially. Prisoners who refuse to apply the death penalty usually depart from the general principles contained in the 1945 Constitution and Law on human rights. Meanwhile, prisoners carrying the death penalty see more of the consequences caused by narcotics abuse which causes a very large number of victims. Therefore, responding to the pros and cons of applying punishment to narcotics dealers and dealers requires a wise view and attitude so that there is an opportunity to apply the death penalty, especially to dealers. Every citizen has the right to defend or defend himself against any threat or attack aimed at the safety of his life. This is a human right, so the deprivation of life by the state in the form of the death penalty is essentially a violation of human rights if it is carried out arbitrarily, without a valid basis according to applicable law. However, on the other hand, it was explained that the panel of constitutional judges said that the death penalty in the Narcotics Law does not conflict with the right to life guaranteed by the 1945 Constitution because the guarantee of human rights in the 1945 Constitution does not adhere to the principle of absolutes. So this is to find out the death penalty for narcotics crimes in terms of human rights and to find out the judge's considerations regarding the death penalty for narcotics crimes in Indonesia, based on Constitutional Court Decision No.2 – 3 /PUU-V/2007.

The process of implementing the death penalty does face many obstacles, including many defendants who have been sentenced to death, and their requests for clemency have been rejected, and they no longer have other legal remedies and have not yet been executed, so that

the defendants not only receive the death penalty but also receive prison sentences. The process of carrying out the death penalty for convicts and death row is long, which can take years, so there is uncertainty for convicts while waiting for the death sentence to be carried out.

CONCLUSION

Delay Prolongs Suffering for the guilty convict, a postponement of execution can be considered an additional form of punishment that prolongs their suffering in addition to the potential increased risk of escape can provide an opportunity for the convict to plan or try to escape from the death penalty, which could endanger the public or law enforcement officers. Then delaying the execution can be considered as not respecting the final court decision. This can undermine public confidence in the fairness of the legal system.

As a result of the rejection of the application for judicial review by the Supreme Court, it is in accordance with the provisions of Article 270 Jo. Article 271 of the Criminal Procedure Code. This is supported by the President's rejection of clemency submitted by convicts on death row for narcotics crimes in accordance with applicable provisions which also automatically stipulate that the court decision has permanent legal force (inkracht van gewijsde).

Suggestion

With this decision, it is hoped that it can be used as jurisprudence for cases that are similar and have similarities to this case. Apart from that, there needs to be a re-evaluation of legal findings regarding state officials that provide legal certainty in the field.

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