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# Legal Opinion of the Supreme Court of the Republic of Indonesia Nomor1045 K / PID.SUS / 2016 Date July 26, 2016

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***Abstract:***
*The Supreme Court no longer examines facts and evidence. The Supreme Court only checks the interpretation, construction and application of the law against the facts determined by Judex facti. Because of this, the Supreme Court is called judex juris. In connection with this matter, several Supreme Court Decrees (jurisprudence) can be stated as follows: Decision of the Supreme Court of the Republic of Indonesia, dated 30 September 1975, Number: 75 K / Kr / 75: "Objection submitted to this type of punishment is unacceptable because it is the authority of Judex Facti which is not subject to cassation, except if another has been imposed than the one stipulated by the law "; Decision of the Supreme Court of the Republic of Indonesia, dated June 26, 1972, Number 15 K / Kr / 1970:" Measure of punishment is Judex's authority Facti which is not subject to cassation unless it exceeds the maximum limit "; Decision of the Supreme Court of the Republic of Indonesia dated January 17, 1983, Number 535 K / Pid / 1982, which states:" Regarding the size of the sentence is the authority of Judex Facti which is not subject to cassation, except Judex Facti imposes penalties that are not regulated by law, or does not give consideration to matters that are burdensome and alleviate punishment "; P the latest envoy on the issue of punishment at the cassation level, is the Decision of the Judicial Review of the Supreme Court of the Republic of Indonesia on 11 February 2008, Number. 22 PK / PID.SUS / 2007, with the Panel of Judges chaired by the Chair of the Supreme Court of the Republic of Indonesia. Mr. Dr. Harifin A. Tumpah, who expressly stated: "That even though in this case the sentence is a death sentence, the imposition of a sentence that is more severe than the sentence imposed by the District Court Verdict which has been deemed correct, violates the general principle Adhered to by the Supreme Court Jurisprudence, namely the severity of the sentence is not subject to cassation. "In connection with the above case it can be seen that the reasons for filing Cassation by the Cassation Appellant (Public Prosecutor) are not related to judex juris, so the Supreme Court should be rejected.*

***Keywords:*** *Legal opinion, decision of the supreme court*

## 1. Introduction

I submit this analysis of law as my calling as a member of the community as well as academics. I submit this analysis as a manifestation of the use of social rights of control in law enforcement in Indonesia, and in North Sumatra in particular. According to my understanding that in upholding the right law, it is also influenced by public legal awareness. Community participation in this case is intended to empower the community in order to realize law enforcement. Based on their rights, the community is expected to be more passionate about implementing optimal social control of law enforcement. This is important in the context of the rescue and normalization of national life in accordance with the demands of reform, which requires the common vision, perception and mission of all state administrators including law enforcement. The similarity of vision, perception, and mission, must be in line with the demands of the people's conscience to carry out their duties and functions seriously, full of responsibility carried out effectively, efficiently, free from corruption, collusion and nepotism.

At present the existence of law as lawyers' law, namely law is identical to the law, the legal process must run according to the principles of rules and logic and the law is considered to be able to discipline the society. So that the law becomes an order, an order that is applied to and therefore humans must submit to the law's orders. Since modern law has relied more on the dimensions of the form that makes it formal and procedural, then the difference between formal justice and justice according to law in one party and substantial justice on the other. Justice does not only have a formal meaning, but also has a substantial meaning and ability to judge, human consciousness does not only postulate reciprocally in a formal sense, but instinctively it also provides an assessment that determines a conception of justice.

With the existence of 2 (two) types of justice, in practice the law can be used to deviate substantial justice. The use of such law does not mean violating the law, but merely shows that the law can be used for other purposes besides achieving justice. This situation makes everything related to law as if justification can be found, even if for things that do not make sense. The law should be able to capture the aspirations of the people who grow and develop, not only present and not just

a static norm that prioritizes certainty and order, but also norms that must be able to dynamize thinking and manipulate people's behavior in achieving their goals (law as a toll of social engineering).
Law is also a renewal in the community or a means of community renewal. The law that is used as a means of renewal can be in the form of law or jurisprudence or a combination of both. However, so that the implementation of legislation as a means of renewal can run properly, it must be formed according with good law, namely the law that lives in society and reflects the values that live in society. In principle, the law is for humans and not the other way around and the law does not exist for itself, but for something wider, namely for price human self, happiness, well-being, and human glory. So, there is no engineering or partisanship in upholding the law. Because the purpose of law is to create justice and prosperity for all people. Basically, there is a phenomenal change in law formulated with sentences from simple to rumi t and from compartmentalized to one unit. This is what he calls a holistic view in science (law). The holistic view provides a visionary awareness that something in a particular order has interrelated parts both with other parts or with the whole. Progressive sentences are very close to some legal theories that have preceded it, including:

- The concept of responsive law which is always associated with goals outside the textual narrative of the law itself.
- Legal Realism, the only legal source is not only the holder of state power, but also legal implementers, especially judges. It is also stated that the form of law is no longer limited to law, but also includes judges' decisions and actions taken and decided by law enforcers.
- Freirechtslehre, a legal regulation must not be viewed by a judge as something merely logical, but must be judged according to its purpose.
- Critical Legal Studies, both of which contain the substance of criticism of the establishment of the flow in liberal law that is formalistic and procedural, as well as a sense of dissatisfaction with the implementation of applicable law.

## 2. Case of Position and Analysis

*2.1. Position Case*

2.1.1. Decision of the Supreme Court

Based on the Decision of the Supreme Court of the Republic of Indonesia Number 1045 K / Pid.Sus / 2016, dated July 26, 2016, it can be known that the Supreme Court:
a. Stating that the defendant named Sukri Ismail was legally and convincingly proven guilty of committing a criminal offense "By conspiracy without rights or against the law offering to sell, sell, buy, receive, mediate in buying and selling, exchange or surrender Narcotics Group I not plants that weigh exceed 5 (five) grams.
b. Imposing a sentence against Defendant Sukri Ismail, therefore, a capital punishment.

*2.2. Claims and Decisions of the Medan District Court*

2.2.1. Prosecutor's / Public Prosecutor's Demands

Criminal prosecutors / public prosecutors at the Medan District Prosecutor's Office on 29 October 2015 are as follows:

- Declare Defendant Sukri Ismail legally and convincingly proven intentionally without rights or against the law "Has committed an act or evil agreement to commit a criminal act of narcotics and Narcotics Precursors, without rights or against the law offering to sell, sell, buy, receive, become intermediary in buying and selling, exchanging, surrendering or receiving Narcotics Group I in the form of non-plants whose weight exceeds 5 (five) grams, "as the general prosecution charges are in violation of Article 114 paragraph (2) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics;
- Imposing a sentence against Defendant Sukri Ismail with capital punishment.

2.2.2. Decision of the Medan District Court

While the Decision of the Medan District Court Number 2057 / Pid.Sus / 2015 / PN.Medan, November 30 2015 as follows:

- Declare Defendant Sukri Ismail legally and convincingly proven guilty of committing a crime "With bad consensus without rights or against the law offering to sell, sell, buy, receive, broker, buy, exchange or surrender Narcotics Group I in the form of non-plant which is more than 5 (five) grams dangerous;
- To impose a criminal sentence on the Defendant because of that, it is punishable by imprisonment for 20 (twenty) years and a fine of Rp. 1,000,000,000.00 (one billion rupiahs) provided that a fine is not paid then is replaced with a prison sentence of 6 (six) months.

*2.3. Decision of the Medan High Court*

For the Effort of Appeal of the Public Prosecutor over the case, the Medan High Court issued a Decision on the Medan High Court No. 11 / PID.SUS / 2016 / PT-MDN, February 9, 2016 are as follows:

- Receive an appeal from the Public Prosecutor;
- Strengthening the Decision of the Medan District Court Number 2057 / Pid.Sus / 2015, which was filed on 30 November 2015.

2.3.1. Case Analysis

2.3.1.1. Enforcement of Legal Certainty

The defendant was charged with Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Article 114 paragraph (2) of Law Number 35 Year 2009 concerning Narcotics, stipulates that in the case of an act offering to sell, sell, buy, mediate in buying and selling, exchange, surrender or receive Narcotics Group Is as referred to in paragraph (1) in the form of plant weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in the form of not 5 (five) grams of weight, the offender is punished with punishment, life imprisonment, or short 6 (six) years and the longest prison sentence 20 (twenty) years and the maximum fine penalty referred to in paragraph (1) plus 1/3 (one third). Article 132 paragraph (1) determines that an evil trial or agreement to carry out criminal acts of Narcotics and Precursor Narcotics as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 11, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126, and Article 129, the perpetrators shall be subject to the same prison sentence according to the provisions referred to in the Articles. Article 1 number 18 of Law Number 35 of 2009 concerning Narcotics determines that Evil Agreements are the actions of two or more people who conspire or agree to do, carry out, assist, participate in, order, advocate, facilitate, give consultation, become members of a Narcotics crime organization, or organize a Narcotics crime.

It can be affirmed that in the case of consensus in narcotics crimes, it is not differentiated or equal to criminal acts of narcotics criminals whose role is to carry out, assist, participate in, order, advocate, facilitate, give consultation, become members of an Narcotics crime organization, or organize actions Narcotics criminal, the same as the criminal.

In my opinion, this needs to be carefully understood, so that the objectives of the law can be achieved properly. The purpose of the law is to create order and order, peace and justice. Law aims to protect humans, prevent arbitrary acts and violations of rights, as well as efforts to create conditions and encourage people to always humanize themselves continuously. In addition to realizing order and justice, the duty of law is to create, order and ensure legal certainty.

Legal certainty is the will of every person, how the law must apply or be applied in a concrete event. Legal certainty means that everyone can demand that the law be implemented and that demand must be fulfilled, and that any violation of the law will be dealt with and subject to legal sanctions.

As is known that the constitutional system creates legal order, which guarantees equality before the law, guarantees the establishment of law, and guarantees the achievement of legal objectives. The legal order (rechtsorde) is intended as a state power based on the law desired by law, and the state of society in accordance with applicable law. Legal order is created if: a) a product of legislation does not conflict with each other, both vertically and horizontally, b) the behavior of the executor of state power and community members in accordance with applicable legal rules.

Public order is a state of organizing human life as a life together. An orderly state that generally expresses a generally accepted order as a minimal appropriateness, so that life together does not turn into anarchy. Public order is often discussed using different terms such as "state of peace," "legal certainty." He needs something that is able to result in the condition of society in general is orderly and not vice versa; legal rules are actually the objective interests of all parties in society. This means that if left unchecked, the general state of society may be disorderly. Justice has not been achieved with the existence of order, because justice is more than just order. Public order is actually also a manifestation of a state of peace guaranteed by collective security, that is, a human order feels collectively secure. Freedom and personal responsibility regarding the law.

The supremacy of the law implies supremacy of values, the supremacy of law implies that in the life of the nation it must be upheld by substantial values that inspire the law and become the demands of the community, among others: "upholding the values of justice, truth, honesty, and trust among others"; upholding civilized human values and respect / protection of human rights; absence of abuse of power / authority; the absence of favoritism and corruption, collusion and nepotism practices. The values of supremacy of law should be realized in the entire order of life in the community / state, meaning not only manifested legal justice, but also social justice, political justice, and justice in all other areas of life. There is no abuse of political power, misuse of economic power and so on; and there is no practice of favoritism (favoritism) in all areas of life.

**3. Reasons for Cassation by the Cassation Applicant (Prosecutor / Public Prosecutor).**

It can be said that the considerations or reasons used as the reason for filing a Cassation by the Applicant (Prosecutor / Public Prosecutor) are too general and do not give concrete individual considerations / reasons to demand individual criminal liability for the Defendant according to his role or deed in one crime.

Some considerations / reasons for applying for Cassation by the Cassation Applicant (Public Prosecutor) can be examined as follows:

That the Panel of Judges of the Medan High Court who decided the case in the name of Defendant Sukri Ismail did not implement Article 27 paragraph (3) of Law Number 14 of 1970 which mandated that the Panel of Judges in deciding cases should show the values of justice in society and the purpose of promulgation Law Number 35 of 2009 concerning Narcotics as considered as letter e and Law Number 35 of 2009 "That imports, exports, produces, plants, stores, distributes and / or uses Narcotics without strict and thorough control and supervision and contrary to the laws and regulations that are criminal acts of Narcotics because they are very detrimental and constitute a very big danger to human life, society, nation and state and the national security of Indonesia. "

It needs to be emphasized that the connection with law enforcement, the prevailing legal order in a society, is basically the embodiment of the legal ideals adopted in the community concerned into a set of positive legal rules, legal institutions and processes (behavior of government bureaucracies, law enforcers and citizens) means that the law that applies in the community must not conflict with the values that live in society.

The quality of development and law enforcement is related to the central issue currently demanded by the public, namely the protection of human rights; upholding the values of truth, honesty, justice, and trust between people; there is no abuse of power / authority; clean from the practice of pavorism (favoritism), corruption, collusion and nepotism and the justice mafia; the realization of an independent judicial power / law enforcement and the establishment of a code of ethics / professional code; the existence of a clean and authoritative government.

Law Enforcement must start from the judicial, social and propriety postulates. So, law enforcement that contains Civilization Values and Humanity and Kepatutan. Reaching TRUTH (truth) and JUSTICE (justice) then every law enforcement starts from the values of civilization and humanity and propriety, must approach truth and justice. It should also be understood that Law Enforcement is not solely to enforce laws and regulations, but must be aimed at upholding truth and justice. The WETMATIG (legal) is not necessarily RECHTVAARDIG (justice). Something that Rechtmatig (lawfull) is not necessarily RECHTVAARDIG (justice). But something that is in accordance with the values of Civilization and Humanity, must contain TRUTH and JUSTICE values.

It also needs to be understood that the supremacy of law is the supremacy of values being the demands of the community, among others, namely the upholding of the values of justice, truth, honesty, and trust among others "; upholding civilized human values and respect / protection of human rights; absence of abuse of power / authority; the absence of favoritism and corruption, collusion and nepotism practices.

That narcotics crimes have been transnational in nature by using a high modus operandi, sophisticated technology supported by a broad network of organizations, and have caused many casualties, especially among the nation's young generation that seriously endanger the lives of people, nations and countries. - Law Number 22 Year 1997 concerning Narcotics is no longer in line with the development of developing situations and conditions to cope with and eradicate the crime.

In my opinion, these considerations are not relevant as a basis for consideration of filing a Cassation, because these considerations are the basis for consideration of the issuance of Law No. 35 of 2009 concerning Narcotics, not juridical / legal considerations. This is where carefulness and precision from the law enforcers are needed so that truth and justice are truly upheld by upholding the law correctly.

In order for truth (truth) and justice (justice) to be upright, law enforcers must have a refinement of conscience that is responsive to sense of justice, thick sense of responsibility, capable of implementing services rather than punishing. Law enforcers ought to have to understand that the law is based on human values. Law based on human values reflects norms that respect human dignity and recognize human rights. Norms that contain noble values that uphold human dignity and guarantee human rights, continue to develop in accordance with the demands of the human conscience.

If law enforcers ignore moral principles and noble human character, it means not to be clean in terms of morals or ethics. It needs to be understood that in principle that law in its entirety (totality), means that law is not only a ruling that is concrete, casuistic and individual (inconcreto law), but also values that live in society which is a measure of operational behavior.

Paying attention to evidence in the form of Narcotics Group I, which is relatively small and has potential negative impacts that can be caused for fostering the nation's successor generation so that the Defendant's sentence is felt not to reflect a sense of justice, especially among the young generation that is very dangerous to people's lives, the nation. This consideration is not a consideration of the application of the law.

**4. Decision in the form of the imposition of a death sentence**

Stating that the defendant named Sukri Ismail was proven legally and convincingly guilty of committing a criminal offense "By conspiracy without rights or against the law offering to sell, sell, buy, receive, broker, buy, exchange or surrender Narcotics Group I is not a plant that is closely related exceed 5 (five) grams. The Supreme Court handed down a sentence against Defendant Sukri Ismail, therefore, a capital punishment.

In connection with the capital punishment above, it needs to be separated between criminal law and criminal acts and criminal liability. This means that the criminal law violated by a person is separated from criminal and criminal liability, because criminal law regulates or describes prohibited actions carried out by a person while criminal and criminal liability includes whether or not someone is convicted. If the perpetrator or person who is convicted or held to be held accountable for crimes needs to be proven his mistakes and criminal liability are requested in accordance with his actions, and must not be associated with actions not carried out by someone or person, but by other people.

In my opinion, capital punishment is no longer suitable to be applied in a civilized country. In connection with the threat of capital punishment, it is necessary to have the courage to oppose it even though the law stipulates that it must impose capital punishment.

In this regard, it is understandable that humans are placed as the focus of the entire legal realm. In the paradigm philosophy of practical law, the position of man is for law and logic of law, so that humans are forced to enter into law, law is a law that is intended for humans. So, the law is denied legal separation from humanitarian and morality factors. The main principle that is used as a legal basis is law for humans and not vice versa. So, people are made the determinant and understood in this case humans are basically good. The consequence is that law is not something absolute and final but in the process of being (law as a process, law in the making). So, the law is for humans, which includes the values of truth and

justice which are the points of discussion of the law, so that ethical and moral factors are inseparable from the discussion. So progressive law explicitly links legal, humanitarian factors with morality. For that, in every case submitted to a judge, he must remain guided by the applicable laws and regulations, while upholding human values, truth and justice. According to Satjipto Rahardjo, law is only part of an effort to organize order in society, but it is not exactly the same as order. Order includes law but law is not the only way or way to create order. Whereas according to Asep Warlan Yusuf is a law that is orderly and without suppressing the human dignity of every citizen, or in other words what is needed is a law that always serves the interests, justice, order and peace to support the realization of a society that is both inner and outer. Restoring an equitable law is interpreted as the basic attitude of the Indonesian people to recognize, respect and place a law that has the essence of justice above political interests in a state and social order. Restoring law in a reform era that upholds the values of democracy means that in shaping the law it must be carried out through an aspirational, accommodative, participatory and collaborative process while still prioritizing the interests of the people.

The ideal judge's decision at least contains the idea of recitation which includes elements of justice, legal certainty and expediency. The three elements must be applied proportionally which ultimately results in a decision that fulfills the expectations of justice seekers. Related to Eddy O.S. Hiariej said that it is necessary to emphasize that in criminal law in Indonesia criminal acts and criminal liability are separated clearly. Criminal acts only include the prohibition of an act, while criminal liability includes the possibility of being convicted by the author / perpetrator. Basic and criminal acts are the principle of legality, while the basis and criminal responsibility are non-criminal principles without error or geen straf zonder schuld. fundamental differences with the Dutch criminal law that does not separate strafbaar van het feit and strafbaar van de dader can then escape and lawsuits. The adage used here is nullum crimen sine poena.

In connection with criminal prosecution, the following expert opinions can be listened to; that According to Aquinas, when the state imposes a criminal sanction on the work power of treatment, it is necessary to pay attention to general prevention and special prevention (poenae praesentis vitae magical injection of medicinales quam retributative). Save the author, the theory of rehabilitation is also inseparable and the relative theory relating to prevention. Penalty as a drug proposed by Aquinas is in order to improve the convicts so that when they return to the community, they will no longer repeat their actions as specifically intended for prevention. According to Lafave, criminal aims to restore justice which is known as Restorative justice. Restorative justice is understood as a form of approach to solving cases according to criminal law by involving criminals, victims, families of victims or perpetrators and other related parties to seek a fair solution by emphasizing recovery in their original state and not in retaliation. The term restorative justice originates from Albert Eglash in 1977, who tried to distinguish three forms of criminal justice, respectively. It is retributive justice, distributive justice and restorative justice. According to Eglash, the focus of retributive justice is to punish the perpetrator for the crimes committed by him. Whereas distributive justice has the purpose of rehabilitation of the offender. While restorative justice is basically the principle of restitution by involving victims and perpetrators in a process that aims to safeguard reparations for victims and rehabijitasi perpetrators. Marshall, as quoted by Antony Duff, defines restorative justice as a process for the parties involved in a crime to jointly solve it by overcoming the action and its implications in the future. The aim and restorative justice according to van Ness is to restore the security of the victims and perpetrators who have resolved their conflicts. M. Kay Harris, who cites the opinions of Braithwaite and Strang, provides two notions of restorative justice. First, restorative justice as a process concept is to bring together the parties involved in a crime to express the suffering they have experienced and determine what must be done to restore the situation. Secondly, restorative justice is a concept of value which contains different values and ordinary justice because it focuses on recovery and not punishment.

Thinking progressively means having to be brave to get out of the mainstream thinking of legal absolutism, then put the law in a relative position. In this case the law must be placed in all humanitarian issues. The concept of progressive law is certainly different from the positivistic-practical law that has been developing. The progressive law sees the main factor in the law as human beings. While the positivistic law-practically believes the truth of law is above humans. Humans may be marginalized as long as the law remains upright. On the contrary, the progressive paradigm of thought thinks that it is precisely law that can be marginalized to support the process of existentiality of humanity, truth and justice.

**5. Considerations of the Supreme Court Regarding Judex Juris**

In connection with criminal cases, the Supreme Court has the authority to examine criminal cases for ordinary legal remedies, namely Cassation and extraordinary legal remedies, namely the Cassation Level Examination for the Interest of the Law and Review of Court Decisions that Have Obtained Permanent Legal Strength. Article 244 of the Criminal Procedure Code determines that there is a criminal case decision given at the last level by a court other than the Supreme Court, the defendant or public prosecutor can submit a request for a cassation to the Supreme Court except for a free decision. Article 253 of the Criminal Procedure Code determines that:

An examination in the level of cassation shall be carried out by the Supreme Court at the request of the parties as referred to in Article 244 and Article 248 to determine:

- Is it true that a legal regulation is not applied or applied properly;
- Is it true that the trial method is not carried out according to the provisions of the law;
- Is it true that the court has exceeded its authority.

Article 259 of the Criminal Procedure Code determines:

For the sake of the legal interest of all decisions that have obtained permanent legal force from other courts other than the Supreme Court, one application for cassation can be submitted by the Attorney General.

Cassation decisions in the interest of law may not harm the parties concerned.

Article 263 paragraph (2) of the Criminal Procedure Code determines that the request for review is carried out on the basis of:

- If there is a new situation that gives rise to a strong condition, that if the condition is known at the time the trial is still ongoing, the result will be a free verdict or a decision that is not acceptable or the claim of the prosecutor is unacceptable or a lighter criminal provision is applied. .
- If in various decisions there is a statement that something has been proven, but the thing or condition as the basic factor and the reason for the proven verdict has turned out to be contrary to one another.
- If the verdict clearly shows an oversight of a judge or a real mistake.

Based on the provisions of Article 263 paragraph (2) of the Criminal Procedure Code above, it can be seen that a review can be carried out if there is a new situation that can free or cause a decision to be free from any lawsuits or rejection of the demands of the public prosecutor, or if a matter or condition is a basic factor and reason proven verdicts have turned out to be in conflict with one another, or a judge's oversight or a real mistake.

It can be said that for the filing of Cassation and extraordinary Legal Efforts namely Cassation for the sake of law and legal remedies, the Supreme Court uses the function to conduct supervision and regulation. So, it can be stated that:

- The Supreme Court conducts the highest supervision of the administration of justice in all judicial environments and exercises judicial authority.
- The Supreme Court oversees the conduct and actions of Judges in all judicial environments in carrying out their duties.
- The Supreme Court has the authority to ask for information about matters in question with technical justice from all levels of the court.
- The Supreme Court has the authority to give instructions, warnings, or warnings that are deemed necessary to the judiciary in all judicial environments.
- Supervision and authority as meant in paragraphs (1) to paragraph (4) may not reduce the freedom of the judge in examining and deciding cases.

With regard to the Supreme Court's oversight function over the administration of the judiciary, various developments in the judicial process need to be addressed, as follows:

The purpose of the cassation court is:

- To declare a unit of law through jurisprudence which can be interpreted as creating law through jurisprudence through this function, the Supreme Court can create legal rules in jurisprudence including free appeals.
- Maintaining equality, which can be interpreted as ensuring the implementation of justice in a fast, simple and low-cost manner.
- This function is expected to help support the role of supervision in the execution of decisions about forced money.

The objectives of the Supreme Court's decision (jurisprudence) are:

- Creating legal standards in jurisprudence (to settle law standards).
- Fostering the realization of a unified legal framework and a unified legal opinion.
- Creating legal certainty and preventing disparity regulations ...

Based on the description above, it can be known that the Supreme Court in its decision is related to the examination of the legal application of a case. So related to this matter, it can be emphasized that in Indonesian law, judex facti and judex juris are two levels of justice in Indonesia based on how to make decisions. The Indonesian judiciary consists of the District Court, the High Court and the Supreme Court. The District Court and the High Court are judex facti, which are authorized to examine facts and evidence of a case. Judex facti checks the evidence of a case and determines the facts of the case. The Supreme Court is judex juris, only examines the legal application of a case, and does not examine the facts of the case. Etymologically it can be seen that this term comes from Latin. Judex facti means "judges who examine facts", while judex juris means " judges who examine the law ". These two words are also sometimes spelled" judex factie "and" judex jurist. "

The District Court domiciled in the regency capital or city is the first court to examine, decide and settle the case, and act as judex facti. The Court of Appeal is an appeals court against a case that was decided by the District Court, and examined the case in de novo. That is, the High Court re-examined the evidence and facts, thus the High Court also included judex facti. At the Supreme Court, The Supreme Court no longer examines facts and evidence. The Supreme Court only checks the interpretation, construction and application of the law against the facts determined by Judex facti. Because of this, the Supreme Court is called judex juris. In this regard, several Supreme Court Decrees (jurisprudence) can be stated as follows:

- Decision of the Supreme Court of the Republic of Indonesia, dated September 30, 1975, Number: 75 K / Kr / 75: "Objections submitted to this type of sentence are unacceptable because they are the authority of Judex Facti which is not subject to cassation unless dropped other than the law ";
- Decision of the Supreme Court of the Republic of Indonesia, June 26
- 1972, Number 15 K / Kr / 1970: "Measures of punishment are the authority of Judex Facti which is not subject to cassation, except if it exceeds the maximum limit";
- Decision of the Supreme Court of the Republic of Indonesia dated January 17, 1983, Number 535 K / Pid / 1982, which states: "Regarding the size of the sentence is the authority of Judex Facti which is not subject to cassation, except Judex Facti imposes penalties that are not regulated by law, or does not give consideration to things that are burdensome and alleviate punishment ";

- The most recent verdict on the issue of conviction at the cassation level is the Decision of the Judicial Review of the Supreme Court of the Republic of Indonesia on 11 February 2008, Number. 22 PK / PID.SUS / 2007, with the Panel of Judges chaired by the Chair of the Supreme Court of the Republic of Indonesia. Mr. DR. Harifin A. Tumpa, SH, MH, firmly stated: "Even though in this case the threat of punishment is the death sentence, but the punishment that is more severe than the sentence imposed by the District Court that has been deemed correct, is the general principle adopted by the Supreme Court Jurisprudence, namely the severity of punishment is not subject to cassation ".

In connection with the above case, it can be seen that the reasons for filing a Cassation by the Cassation Appellant (Public Prosecutor) are not related to judex juris, so it should be rejected by the Supreme Court.

Some considerations / reasons for applying for Cassation by the Cassation Applicant (Public Prosecutor) can be examined as follows:

- That the Panel of Judges of the Medan High Court that decided the case in the name of Defendant Sukri Ismail did not implement Article 27 paragraph (3) of Law Number 14 of 1970 which mandated that the Panel of Judges in deciding cases should show the values of justice in society and the purpose of promulgation Law Number 35 of 2009 concerning Narcotics as considered as letter e and Law Number 35 of 2009 "That imports, exports, produces, plants, stores, distributes and / or uses Narcotics without strict and thorough control and supervision and contrary to the laws and regulations that are criminal acts of Narcotics because they are very detrimental and constitute a very big danger to human life, society, nation and state and the national security of Indonesia. "
- That narcotics crimes have been transnational in nature by using a high modus operandi, sophisticated technology supported by a broad network of organizations, and have caused many casualties, especially among the nation's young generation which seriously endangers the lives of the people, nation and state - Law Number 22 Year 1997 concerning Narcotics is no longer in line with the development of developing situations and conditions to cope with and eradicate the crime.
- Paying attention to evidence in the form of Narcotics Group I, which is relatively small and has potential negative impacts that can be generated for fostering the nation's successor generation so that the convicted sentence does not reflect a sense of justice, especially among the young generation that endangers people's lives. nation and state.

**6. Conclusion**

In social relations, every human being has rights, and at the same time law arises. Human Rights are inherent rights to humans that reflect their dignity, which must obtain legal guarantees, because rights can only be effective if the right can be protected by law. Law is basically a reflection of human rights, so that the law contains justice or not, is determined by human rights contained and regulated or guaranteed by the law. Law is not seen as a reflection of power alone, but must also emit protection towards the rights of citizens. In addition, the role of law in society is so that the First: Society and individuals are free from oppression, both oppression from the outside or other nations or oppression from within by the authorities and also oppression between fellow members of society. Second: the community is not treated authoritatively, the law may not be a tool of power of the ruler, may not incarnate or personify themselves as Law, individual freedom and independence must not be determined by the will or desire of the ruler. Third: The existence and position of the ruler based on the applicable legal rules, the law becomes the stake and the foundation of the power and authority of the ruler, the ruler must not exceed the authority and function given by the law, such actions are against the law. Fourth: Characteristics of the most essential role of law is ensuring security and protecting the rights and interests of members of the local community in developing personal life, and in pursuit of spiritual and material happiness and well-being, each individual should be obedient and not justified at will. Law is for humans, then the implementation of Law or law enforcement must provide benefits and uses for the community. The community is very interested in the implementation or enforcement of law and justice.Thus, this analysis is made, with the expectation that all parties can understand so that improper actions do not arise, especially if those actions lead to criminal acts. I hope, this brief analysis can be useful for all of us. Thank you very much for your attention.

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