

## Legal Analysis of the Application of Criminal Sentences Below the Minimum in Cases of Narcotic Crimes

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**Abstract.** *This study aims to determine and analyze judges in giving criminal sentences below the minimum in narcotics crime cases (Case Study at the Klaten District Court) and to determine and analyze the obstacles of judges in giving criminal sentences below the minimum in narcotics crime cases and their solutions (Case Study at the Klaten District Court). This study uses a sociological juridical method with analytical descriptive specifications. Primary data were obtained directly through interviews and analyzed using legal theory. The results of this study Criminal sentences below the minimum in narcotics crime cases (Case Study at the Klaten District Court). In narcotics crime cases, judges have the authority to make decisions based on the provisions of the law, but in the case of the Klaten District Court, the judge sentenced them below the minimum sentence regulated in Article 112 of Law No. 35 of 2009. Although the judge used the consideration of the Supreme Court Circular (SEMA) to deviate from these provisions, this is contrary to the principle of legal certainty and the principle of legality. Therefore, consistency is needed in the application of punishment according to existing provisions in order to provide a sense of justice and legal certainty for the community, as well as a deterrent effect on perpetrators of criminal acts. obstacles for judges in giving criminal sentences below the minimum in narcotics crime cases and their solutions (Case Study at the Klaten District Court). Obstacles in giving criminal sentences below the minimum in narcotics cases include limited rehabilitation facilities, lack of comprehensive psychological assessments, implementation of the Supreme Court Circular (SEMA) which deviates from legal provisions, and uncertainty in law enforcement. Solutions that can be applied are improving rehabilitation facilities, introducing systematic psychological assessments, prioritizing legal certainty by reducing dependence on SEMA, and balancing the objectives of rehabilitation with punishment. Implementation of this solution will strengthen fair law enforcement and focus on the recovery of victims of drug abuse.*

**Keywords:** Analysis; Crime; Juridical; Narcotics.

## 1. Introduction

Indonesia is a country that bases all governance and state life on law. This is emphasized in the explanation of the 1945 Constitution, which states that: "The State of Indonesia is based on law and not based on mere power." This statement emphasizes that law is the main foundation in the administration of the state, not just power or authority that stands without limits.<sup>1</sup> As a country of law, Indonesia has an obligation to ensure that all actions, behaviors, and decisions taken by the government and its people are based on applicable laws. The law functions as a guideline that regulates community life, determines what may and may not be done, and provides clarity on the rights and obligations of each individual.<sup>2</sup>

More than just a regulation, law in Indonesia acts as a tool to uphold justice.<sup>3</sup> Thus, it is important for Indonesia to carry out legal functions consistently and impartially. Fair and consistent implementation of the law is a real manifestation of the state's commitment to guarantee justice for all its citizens.<sup>4</sup> Within the framework of a state of law, all parties, both government and society, are required to submit to the law. No action is above the law, and every violation must be handled in accordance with applicable legal provisions. Therefore, the role of law in Indonesia is not only as a written regulation, but as the main means to create and maintain social justice in society.<sup>5</sup>

Drug abuse is not a new phenomenon to mankind; its history is as long as human civilization itself. This problem has existed for centuries and continues to grow over time. Combating drug abuse is not an easy task because perpetrators are always finding new ways and increasingly sophisticated modus operandi to avoid detection and law enforcement. Although narcotics have significant benefits in the medical world, especially in treatment and scientific research, it is undeniable that this substance is often abused. Narcotics are actually very important materials in the world of health. Proper and legal use can help in treating various diseases and speed up the healing process. In addition, scientific research uses narcotics to find new medicines and more effective treatment methods.

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<sup>1</sup>Sudikno Mertokusumo, *Understanding Law*, Liberty Publisher, Yogyakarta, 2003, p. 45.

<sup>2</sup>Satjipto Rahardjo, *Understanding Law*, Alumni Publisher, Bandung, 2000, p. 62

<sup>3</sup>Sri Endah Wahyuningsih, Urgency of Reforming Indonesian Material Criminal Law Based on the Values of Belief in the Almighty God, *Journal of Legal Reform*, Volume 1 January-April 2014, p. 17

<sup>4</sup>Sri Endah Wahyuningsih, Teguh Prasetya, Muchamad Iksan, Process of Implementation and Benefits of Crime Scene Investigation in Case of Criminal Investigation in Indonesia, *Journal of Legal Reform*, Vo 5 No 3 2018, p. 101

<sup>5</sup>Mariam Darus Badruzaman, *Understanding Law*, Publisher Citra Aditya Bakti, Bandung, 1996, p. 30.

However, ironically, these great benefits are often overshadowed by widespread abuse. Many individuals use narcotics illegally without considering the legal consequences, ignoring the fact that such actions are serious violations of the law.

Law Number 35 of 2009 concerning Narcotics, hereinafter referred to as the Narcotics Law, defines narcotics as substances or drugs that can be derived from plants or non-plants, with either synthetic or semi-synthetic properties. These substances have significant effects on the human body, including causing decreased or altered consciousness, loss of feeling, and reducing or even eliminating pain. In addition, narcotics are also known to have strong addictive properties, which can cause dependence in their users. The Narcotics Law provides clear limitations on who can use these substances legally. Article 1 paragraph 15 explains that "abusers" are individuals who use narcotics without rights or in an unlawful manner. This means that any use of narcotics that is not in accordance with legal provisions, such as without a doctor's prescription or outside of medical needs regulated by law, is categorized as abuse. This regulation aims to prevent uncontrolled use of narcotics and to ensure that these substances are only used in contexts that are truly necessary and in accordance with existing regulations.

Judges have very important authority in trying and giving decisions in narcotics cases. This authority is based on applicable law, where judges act as enforcers of justice who are tasked with ensuring that the law is applied correctly and fairly. In narcotics cases, judges must consider various aspects, including evidence presented by the prosecutor, the defense of the defendant, and the social and health impacts caused by drug abuse. Judges must also refer to laws governing narcotics, such as Law Number 35 of 2009 concerning Narcotics in Indonesia. Based on this law, judges have the authority to impose various types of punishments, ranging from imprisonment, rehabilitation, to fines, depending on the severity of the violation committed by the defendant.

In making a decision, the judge must also consider the principles of justice, benefit, and legal certainty. The judge must ensure that the decision handed down not only meets the punishment aspect, but also provides a deterrent effect for the perpetrator and prevents drug abuse in society. Thus, the role of the judge is very crucial in enforcing the narcotics law. The judge in giving Decision Number 102/Pid.Sus/2024/PN Kln regarding the case of Eko Wijanarko, also known by the alias Gareng, has considered several important aspects in making his decision. Eko Wijanarko, a man who was born in Klaten on September 18, 1980, and is currently 43 years old, was proven to have violated Article 112 of the Narcotics Law, which regulates the possession of class I narcotics. Although in the provisions of the law, violation of Article 112 can be punished with a minimum of 4 years in prison, the judge decided to give Eko Wijanarko a prison sentence of 2

years and 6 months. This decision is based on the Supreme Court Circular (SEMA) Number 3 of 2015, which provides guidelines for judges to consider the special conditions of the defendant, including mitigating factors that can affect the severity of the sentence. In this case, the judge considers that a lighter sentence than the minimum provision can be imposed while still considering justice for all parties involved. Based on the above facts, the purpose of the study can be taken to find out and analyze judges in giving criminal decisions below the minimum in narcotics crime cases (Case Study at the Klaten District Court). And to find out and analyze the obstacles of judges in giving criminal decisions below the minimum in narcotics crime cases and their solutions (Case Study at the Klaten District Court).

## **2. Research methods**

This study uses a sociological legal method with analytical descriptive specifications, which aims to describe and analyze legal phenomena systematically. Primary data in this study were collected directly through in-depth interviews with related parties, such as judges, prosecutors, lawyers, or perpetrators involved in the case that was the object of the study. Data analysis was carried out using a relevant legal theory approach to interpret the findings. With this approach, the study is expected to provide a comprehensive picture of the legal aspects in practice, as well as to compile recommendations that support the application of the law more effectively and in accordance with the principles of justice.

## **3. Results and Discussion**

### **3.1 Judges in Giving Criminal Decisions Below Minimum in Narcotics Crime Cases (Case Study at Klaten District Court)**

Judges as state judicial officials have the authority to try, namely to take action to accept, examine, and decide criminal cases based on the principles of freedom, honesty, and impartiality in court hearings. This is emphasized in Article 1 paragraph (8) and (9) of the Criminal Procedure Code. In addition, in the Judicial Power Law, judges also have the main task of upholding law and justice. In carrying out this task, judges are required to consider various aspects, including legal interests, the community's sense of justice, and applicable legal principles. In the case of the Klaten District Court Decision Number 102/Pid.Sus/2024/PN.Kln, the defendant was found guilty of committing a crime based on Article 112 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. However, the sentence imposed was imprisonment for 1 year and 6 months and a fine of IDR 1,000,000,000. If the fine is not paid, it will be replaced with imprisonment for 6 months. However, the sentence is lighter than the special minimum sentence, namely 4 years imprisonment, as stipulated in the article.

The judge's consideration in imposing a sentence below the special minimum in this decision is interesting. One of the reasons used is that the defendant, Eko Wijanarko alias Gareng, is considered a drug abuser for himself in accordance with Article 127 paragraph (1) letter a of the Narcotics Law. The trial facts show that some of the crystal methamphetamine received by the defendant from Mr. Rizki (DPO) was for his own consumption. In addition, the defendant has a track record as a user who was once sentenced to 8 months for crystal methamphetamine consumption.

The judge also referred to Supreme Court Decision Number 1071/K/Pid.Sus/2012, which stated that Article 112 of the Narcotics Law is often misinterpreted as a "trash can article." In this view, users who control narcotics for their own consumption are often caught in this article without considering the defendant's intention or purpose in possessing narcotics. This approach is considered inconsistent with the principle of justice because it does not consider the context or circumstances of the defendant. Furthermore, the judge also based his considerations on Supreme Court Circular Letter (SEMA) Number 4 of 2010 and SEMA Number 3 of 2015. In SEMA Number 4 of 2010, it is stated that drug abusers with relatively small amounts can be placed in medical or social rehabilitation institutions. However, in Klaten Regency there are no such rehabilitation facilities, so the judge decided to impose a prison sentence that was considered appropriate to the defendant's actions.

SEMA Number 3 of 2015 is also a reference, especially the point stating that if the prosecutor's indictment does not include Article 127 of the Narcotics Law but the defendant is proven to be a user with a relatively small amount of narcotics, the judge can deviate from the provisions of the special minimum sentence. In this case, the package of crystal methamphetamine owned by the defendant was only 0.17429 grams, which according to the SEMA is considered a small amount. Another consideration used is the purpose of the sentence itself. The judge emphasized that punishment does not only function as retribution for the perpetrator's actions, but must also provide benefits for the perpetrator and society. If the defendant is sentenced too long, it is feared that it will have a negative impact on the defendant's rehabilitation and reintegration into society.

However, the judge's decision to deviate from the provisions of this special minimum sentence has drawn criticism. One of the main criticisms is that the SEMA only contains technical guidelines and does not have the power to regulate as in laws and regulations. Thus, the SEMA should not be used to deviate from the provisions that have been regulated in the law. As stated by Oheo K. Haris in his writing, the role of judges in the application of minimum sanctions for special crimes is very large. As the final decision maker, judges are required to be guided by applicable laws and regulations. In the context of Indonesian law which

adheres to the continental system, judges are bound by the law and do not have the freedom to create new rules.

Furthermore, in the continental legal system, the principle of legality (*nulla poena sine lege*) is the main principle. This principle states that there is no crime without a law, so that every criminal sanction must be based on applicable laws and regulations. In this case, deviations from the provisions of the special minimum sentence are considered to be contrary to the principle of legality. In addition, the objectives of the law stated in Article 1 paragraph (3) of the 1945 Constitution include legal certainty, justice, and benefit. These three objectives must be met simultaneously. If the judge decides on a sentence below the special minimum, then legal certainty as one of the objectives of the law is not met. This creates uncertainty in law enforcement and has the potential to create a bad precedent.

The decision that imposes a sentence below the special minimum is also considered inconsistent with the purpose of establishing Law Number 35 of 2009 concerning Narcotics. This law is designed to provide a deterrent effect and ensure legal certainty in handling narcotics cases. With the deviation, this goal is not achieved.<sup>6</sup>

According to the author, judges should make decisions based on the provisions of the law without deviating from the special minimum sentence. If there is a need to give a lighter sentence, then the more appropriate solution is through a revision of the law, not by relying on the non-legislative SEMA. In conclusion, the Decision of the Klaten District Court Number 102/Pid.Sus/2024/PN.KIn shows a dilemma in the application of the law. On the one hand, judges try to balance substantive justice with legal interests. However, on the other hand, deviations from the provisions of the law create legal uncertainty and contradict the principle of legality. Further evaluation of the regulations related to drug abusers is needed in order to provide balanced justice. Revision of the Narcotics Law or its implementing regulations may be a step that needs to be considered to address the problems arising from the application of special minimum sentences.

Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics contain legal uncertainty in its application, which causes confusion in implementation in the field. This legal uncertainty, in turn, gives rise to multiple interpretations and challenges consistent application of existing provisions. As the basis of the applicable legal system, legal certainty is essential so that the law can be understood and applied effectively. Legal certainty itself refers to clear, firm, and unambiguous legal principles. Without legal certainty, a legal provision

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<sup>6</sup>Supriyanto, Arif. *Study of Narcotics Crime and Its Application in Indonesian Criminal Law*. Kencana, Jakarta, 2012, p. 56

cannot be used as a guideline that can be relied on by the community or legal actors. An uncertain law will lose its influence as a tool to uphold justice.

Proper application of the law can be achieved through the principle of *Logische Specialite it*<sup>7</sup>, or logical specificity. This principle states that when there are specific provisions in a law, then those provisions must be applied more specifically than general provisions. In this case, Article 127 of the Narcotics Law, which more specifically regulates drug abuse, can be considered a special provision that applies to cases of drug abuse in certain amounts, while Article 112 is more general, regulating the possession, storage, and control of narcotics regardless of whether the suspect is a user or not.

Article 112 contains general elements, such as possessing, storing, controlling, or providing narcotics. This provision applies to anyone involved in drug trafficking, either as a user or as a dealer. On the other hand, Article 127 specifically regulates drug abuse, which is aimed at those involved in the use of narcotics in relatively small amounts. This difference confirms that Article 127 is a more detailed elaboration of the general provisions contained in Article 112, in accordance with the principle of *Lex Specialis derogat Lex Generalis*, which means that special provisions override general provisions.

In this case, the application of the law would be more appropriate if viewed from the context of more specific provisions in accordance with the facts found in the field. If someone is proven to have consumed narcotics in relatively small amounts, as regulated in Article 127, then this provision is more appropriate to apply than Article 112 which is more general. The provisions in Article 127 lead to more appropriate handling for narcotics users who are not dealers, so that they do not need to be given too severe a sentence. Therefore, legal certainty can be achieved if the court pays attention to the context and elements contained in each article. However, in practice, there are often discrepancies in the application of these two articles. For example, if in the trial process there is evidence showing that the defendant is a drug user, then the judge should refer to Article 127 as a more specific provision. However, in some cases, Article 112 is still applied, even though it does not meet the elements that specifically regulate drug abuse. This causes legal uncertainty, because the application of articles that are not in accordance with the legal facts can cause injustice to the defendant.

In addition, there are also challenges in terms of law enforcement related to valid evidence.<sup>8</sup> One way to reduce legal uncertainty is to ensure that all evidence used in the trial process has valid and accountable legal force. In the case of narcotics, this means that laboratory tests and medical examination

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<sup>7</sup>Mulyadi, Laksmi. *Criminal Law on Narcotics and Social Problems*. Pustaka Yustisia, Jakarta, 2020, p. 97

<sup>8</sup>Sutrisno, Hadi. *Criminal Law on Narcotics: Theory and Practice in Indonesia*. Sinar Harapan Library, Jakarta, 2013, p. 124

results must be an integral part of the legal process, so that the decisions taken by the judge can be ensured to be more objective and fair. To create better legal certainty, there needs to be closer cooperation between law enforcement officers and related institutions, such as the National Narcotics Agency (BNN) and rehabilitation institutions. This is because, in many cases, social and psychological factors also influence the defendant's behavior in consuming narcotics. Rehabilitation is a very important step in overcoming the drug problem, and if adequate rehabilitation places are not available, then the problem of legal uncertainty in the application of Articles 112 and 127 becomes more complicated.

To overcome this problem, a clearer change or revision is needed regarding the provisions in Article 112 and Article 127, so that there are no more legal loopholes that can cause uncertainty in their application. Revisions to existing laws or regulations will help provide clearer guidelines for judges and other law enforcers in deciding narcotics cases. If this is done, it is hoped that the law can truly function as a tool to uphold justice and ensure legal certainty for all parties involved. Furthermore, it is important to create awareness among judges, prosecutors, and other law enforcers about the importance of legal certainty in every judicial process. Law enforcers must be encouraged to always be guided by the basic principles of law that guarantee certainty and justice for every individual. Without this awareness, the law will be ineffective, and the goals of the legal system itself will not be achieved.

### **3.2 Obstacles of Judges in Giving Criminal Decisions Below Minimum in Narcotics Crime Cases and Their Solutions (Case Study at Klaten District Court)**

In handling drug crime cases, judges are often faced with a dilemma between the application of minimum sanctions stipulated in the law and the specific conditions of the defendant. One of the main obstacles is the limited rehabilitation facilities, especially in areas such as Klaten Regency which do not yet have drug rehabilitation facilities. This makes it difficult for judges to offer alternative punishments in the form of rehabilitation for drug user defendants. This situation shows the urgent need for collaboration between local governments and central-level rehabilitation institutions to ensure the availability of adequate facilities. In addition, the inconsistency between the Supreme Court Circular (SEMA) and the provisions of the law often creates legal uncertainty, adding to the complexity of judges' decisions. These problems show the importance of policy and infrastructure updates in handling drug cases effectively.

One of the main obstacles is the absence of rehabilitation facilities in many areas, such as in Klaten Regency, which makes it difficult for judges to place defendants to get the necessary treatment. Rehabilitation facilities are very important in providing a more humane and recovery-oriented alternative to



punishment. However, the lack of these facilities causes many drug users to be treated as criminals, not as victims.<sup>9</sup> This not only causes social problems but also prolongs the cycle of dependency. As a solution, local governments must immediately build adequate rehabilitation facilities at the district level. In addition, cooperation with rehabilitation institutions at the provincial level can be a temporary solution to overcome this obstacle while waiting for the construction of permanent facilities.

Judges also often lack in-depth information about a defendant's mental state due to the absence of a comprehensive psychological assessment. In drug abuse cases, this information is critical to determining whether rehabilitation or punishment is more appropriate for the defendant.<sup>10</sup> Unfortunately, in many courts, psychological assessments are not a routine part of the trial process. As a result, judges are often forced to make decisions based on limited data. To address this issue, courts should begin involving psychologists or psychiatrists in every drug case, ensuring that defendants receive a thorough evaluation. This can help judges make more accurate and appropriate decisions for the defendant's condition, strengthening the principle of fairness in the criminal justice system.

The Supreme Court Circular (SEMA) is often used as a guideline in imposing sentences below the minimum. However, its application often deviates from the provisions of Article 112 Paragraph (1) of Law Number 35 of 2009, which stipulates the minimum limit for sentences. This creates a legal dilemma, where judges must choose between following the SEMA or the provisions of the law. As a result, the resulting decision can be considered inconsistent, creating legal uncertainty for the defendant and the public. The suggested solution is for judges to use the SEMA selectively, only in truly urgent conditions and for clear reasons. In addition, the government needs to align the rules in the SEMA with the law to reduce the potential for legal conflicts in the future.

Sentencing justice in drug cases often involves weighing the deterrent effect against the opportunity for rehabilitation. While minimum sentences are designed to deter, rehabilitation focuses more on restoring the defendant to society. In many cases, judges try to balance these two approaches. However, without clear guidelines, this flexibility can lead to inconsistencies in court decisions. Therefore, there is a need for clear guidelines that integrate aspects of punishment and rehabilitation in a balanced way. These guidelines will help judges make decisions that are not only based on justice but also provide long-term benefits for the perpetrator and society.

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<sup>9</sup>Rina, Fatima. *Aspects of Criminal Law on Narcotics and Rehabilitation of Offenders*. Sinar Grafika, Jakarta, 2018, p. 105

<sup>10</sup>Setiawan, Yuli. *Analysis of Narcotics Crime in the Indonesian Legal System*. Pustaka Tinta Publisher, Yogyakarta, 2017, p. 102

Current sentencing guidelines are often not detailed enough to address the complexity of drug cases.<sup>11</sup> This creates room for varying interpretations, which ultimately affects the consistency of decisions. New, more detailed guidelines should include criteria such as the defendant's level of involvement, the type of drug abused, and the defendant's potential for rehabilitation. With more comprehensive guidelines, judges can make more objective and consistent decisions, increasing public confidence in the justice system. In addition, these guidelines should also reflect a balance between legal certainty and flexibility in handling unique and complex drug cases.

Judges are often caught between two conflicting legal principles: legal certainty and justice. In drug cases, the principle of legal certainty requires judges to follow the provisions of the applicable law, while the principle of justice allows flexibility based on the defendant's circumstances. To overcome this dilemma, judges need to understand the broader objectives of the law in the context of drug crimes, namely to provide a deterrent effect while opening up opportunities for rehabilitation. This understanding can help judges make decisions that are not only in accordance with the regulations but also support the recovery of the defendant, creating a balance between legal certainty and justice.

Local governments have a key role to play in overcoming the obstacles faced by the courts, especially in providing rehabilitation facilities and training for law enforcers. Without support from local governments, many efforts made by the courts will be hampered. Therefore, local governments need to take proactive steps, including allocating budgets for the construction of rehabilitation facilities and cooperation with central agencies. These steps will not only help reduce the burden on the courts but also speed up the recovery process for drug users, providing a positive impact on society as a whole.

Handling drug cases requires close collaboration between various institutions, including the courts, police, and rehabilitation institutions. Without good coordination, the legal process is often hampered, reducing the effectiveness of interventions carried out. This collaboration can include sharing information about defendants, ensuring the availability of rehabilitation facilities, and providing joint training for law enforcement officers. With better coordination, the process of handling drug cases can be carried out more efficiently and consistently, ensuring that each defendant is treated fairly and according to their condition.

The obstacles in implementing sub-minimum sentences in drug cases indicate the need for comprehensive reform in the criminal justice system. From providing rehabilitation facilities to formulating clearer sentencing guidelines,

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<sup>11</sup>Harsono, Rudy. *Problems of Law Enforcement in Narcotics Cases in Indonesia*. Pustaka Ilmu, Jakarta, 2016, p. 91

every step must be directed towards creating a balance between justice, legal certainty, and expediency. With this reform, it is hoped that the justice system can be more responsive to the needs of the community and the accused, providing solutions that not only punish but also restore. Close collaboration between the government, law enforcement agencies, and the community is key to achieving this goal.

#### 4. Conclusion

In the case of narcotics crimes at the Klaten District Court, the judge imposed a sentence below the minimum stipulated in Article 112 of Law No. 35 of 2009 by referring to the Supreme Court Circular (SEMA). However, this raises problems in the principle of legal certainty and the principle of legality. Other obstacles include limited rehabilitation facilities, lack of psychological assessments, and legal uncertainty. Solutions include improving rehabilitation facilities, systematic psychological assessments, consistent application of the law without relying on SEMA, and a balance between rehabilitation and punishment. These steps support justice and victim recovery.

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