

## **Legal Analysis of Judges' Decision Under the Threat of Minimum Criminal Penalty in Law Enforcement on Drug Crimes**

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**Abstract.** *The final stage in the process of law enforcement against narcotics crimes is the imposition of a Judge's decision, but in practice, Judges often impose decisions below the minimum criminal threat. Judges' decisions that impose sentences below the minimum threat can raise questions about the legal considerations used by the Judge, and have the potential to create legal uncertainty. Based on the background above, the author formulates several problems, namely: the practice of sentencing under the minimum criminal threat by Judges in enforcing Indonesian narcotics crime law, and the implications of sending sentencing under the minimum criminal threat by Judges in enforcing Indonesian narcotics crime law. This study uses a sociological legal approach method, with analytical descriptive research specifications. The data used in this study are primary data and secondary data obtained through interviews and literature studies, then analyzed qualitatively using law enforcement theory, Pancasila justice theory, the theory of the purpose of punishment, and the theory of legal certainty. The results of this study are: (1) the practice of imposing sentences below the minimum penalty by Judges in enforcing Indonesian narcotics crime law reflects the complexity and dynamics between legal certainty and justice. The phenomenon where Judges impose sentences below the minimum penalty can create disparities in law enforcement. This has the potential to damage public trust in the justice system, because the public will feel that the law is not being applied fairly and consistently.*

**Keywords:** Criminal; Judge; Narcotics; Sentence, Verdict.

## **1. Introduction**

Narcotics are substances or drugs, both natural and synthetic, that can affect a person's psychological condition, especially consciousness, thoughts, moods, and behavior. Basically, narcotics are drugs that are needed in terms of health services, so their availability needs to be regulated, but on the other hand, narcotics can cause dependency if misused, so that they can cause physical, mental, social, security and order disorders in a society, which ultimately disrupts national resilience, so that the circulation of narcotics must be properly monitored.<sup>1</sup>

Abuse of narcotics and illegal drugs can cause various negative impacts on physical and mental health. Some of the impacts of drug abuse include changes in consciousness, hallucinations, addiction, damage to body organs, increased risk of infectious diseases, depression and suicidal tendencies.

Veronica Colondam stated that the abuse of narcotics and illegal drugs in question is the abuse of drugs that are blacklisted in the Narcotics and Psychotropics Law. She also stated that drug abuse is the abuse of substances or drugs that have legal consequences and that lead to changes in mentality, behavior, and even addiction.<sup>2</sup>

Judges as one of the components of the criminal justice system, namely as the spearhead of justice. Judges have the authority to issue fair and proportional decisions against perpetrators of narcotics crimes, which in essence are criminal acts that are an imposition of suffering or misery or other unpleasant consequences.<sup>3</sup> Judges have the freedom to determine the type of crime and the level of punishment, in accordance with the minimum and maximum limits stipulated in the law.

The legal basis for enforcing narcotics crime law is currently Law Number 35 of 2009, which regulates various types of narcotics crimes, from production, distribution, to abuse of narcotics. For each crime, Law Number 35 of 2009 stipulates different criminal penalties, including minimum criminal penalties. The minimum criminal penalty is the limit of punishment that must be imposed by the Judge on the perpetrator of the crime. The purpose of determining the minimum criminal penalty is to provide a deterrent effect to the perpetrator and prevent narcotics crimes from occurring in the future.

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<sup>1</sup>Lefri Mikhael, et al. (2023). *Criminal Law Outside Codification*. First Edition. Padang: Global Executive Technology, p. 81.

<sup>2</sup>*Ibid.*, p. 88.

<sup>3</sup>Sri Endah Wahyuningsih. (2013). *Principles of Criminal Individualization in Islamic Criminal Law and Reform of Indonesian Criminal Law*. Second Edition. Semarang: Diponegoro University Publishing Agency, p. 80.

In making a decision on a narcotics crime case, the Judge has the authority to consider things that can mitigate the defendant, such as the defendant's role in disclosing the narcotics case or the defendant's health condition. On the other hand, the imposition of a decision below the minimum criminal threat can be considered a form of injustice and legal uncertainty. The public can judge that the punishment imposed is not commensurate with the perpetrator's actions, thus reducing trust in the criminal justice system.

## **2. Research Methods**

The approach method used in this study is the sociological juridical method. Sociological juridical research, Sociological juridical research not only focuses on the substance of law according to positive law (*ius constitutum*), but also attempts to find the construction of legal culture that lives in society according to the ideals of the desired culture (*ius constituendum*).<sup>4</sup> This study analyzes the Judge's decision in a narcotics crime case, which is a legal product produced in a certain social context. The Judge's decision is not only seen as an application of legal rules, but also as a response to social realities related to drug abuse. This study explores the factors that encourage Judges to issue decisions below the minimum criminal threat, such as pressure from society, the condition of the victim, or rehabilitation considerations. The study also examines the implications of decisions below the minimum criminal threat in preventing drug abuse, or actually causing negative impacts such as injustice or legal uncertainty.

## **3. Results and Discussion**

### **3.1. Practice of Sentencing Below the Minimum Sentence by Judges in Enforcing Indonesian Narcotics Crime Law**

The Republic of Indonesia is a country based on law, so that the existence of law in the life of Indonesian society is a very fundamental thing in the framework of the government system and the life of the nation and state. Hans Kelsen even argued that: "The state and law are one, the existence of the state is always accompanied by the existence of a legal system, and vice versa, where there is a legal system, there must be a state, thus basically the state is a legal order that has a coercive nature".<sup>5</sup>

A state of law is defined as a state that upholds legal principles as the main foundation in the implementation of government, protection of human rights, and social justice for all its people. In practice, the implementation of these principles requires a strong commitment from all elements of society, including

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<sup>4</sup>Muhammad Chairul Huda. (2021). *Legal Research Methods (Sociological Juridical Approach)*. First Edition. Semarang: The Mahfud Ridwan Institute, p. 25.

<sup>5</sup>L. Amin Widodo. (1994). *Fiqh Siasah in the State and Government System*. First Edition. Yogyakarta: Sumbangsih Offset, pp. 10-11.

legislative, executive, and judicial institutions, as well as active participation from civil society.

Criminal law enforcement aims to maintain order in society, protect human rights, and prevent criminal acts. The law enforcement process aims to realize the ideals stated in the laws and regulations into a reality that can be felt by society.<sup>6</sup>In the context of narcotics crimes, when Law Number 35 of 2009 is implemented effectively, the community will feel safe from the threats posed by the circulation and abuse of narcotics. Good law enforcement can reduce the number of crimes related to narcotics, such as illicit trafficking, violence, and other crimes.

Satjipto Rahardjo explains that the legal system consists of a collection of norms that regulate what should be done or happen,<sup>7</sup>Likewise, Law Number 35 of 2009 is a concrete form of legal system that regulates and establishes norms related to the control, use and enforcement of the law against narcotics and other addictive substances.

Basically, the purpose of sentencing or punishment is not to cause suffering or degrade the dignity of someone who has committed a violation of the law. Punishment focuses more on the rehabilitation and reintegration of individuals into society, rather than simply giving punishment as a form of revenge. In practice, the criminal justice system must strive to respect human rights and the dignity of individuals, even when individuals have made mistakes, so a more humanistic approach to law enforcement is essential, which can help reduce stigma and support the rehabilitation process.

Judges are one of the law enforcement officers, who have a very important responsibility in implementing the legal provisions stipulated in Law Number 35 of 2009, especially in terms of enforcing criminal sanctions for violators. When a Judge sentences a perpetrator of a narcotics crime, the Judge will give a verdict within the limits stipulated in Law Number 35 of 2009.<sup>8</sup>

The threat of special minimum criminal sanctions regulated in Law Number 35 of 2009 aims to create a deterrent effect and a sense of fear, both for the perpetrators of the crime themselves and for the wider community, as a general

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<sup>6</sup>Sekar Tresna Raras Tywi, Ira Alia Maerani and Arpangi, "Law Enforcement against Entrepreneurs who Conduct Criminal Acts to Pay Wages Below the Minimum Wage", in Jurnal Daulat Hukum, Volume 4 Issue 1, March 2021, p. 33, <https://jurnal.unissula.ac.id/index.php/RH/article/view/13882/5379>.

<sup>7</sup>Satjipto Rahardjo. (1982). Law and Society. Bandung: Angkasa, p. 48.

<sup>8</sup>Putu Gde Novyartha, SH, M.Hum., Interview, as Judge/Chairman of Tabanan Class IB Court, March 19, 2025.

prevention effort, and for certain individuals as a special prevention. This can be explained as follows:<sup>9</sup>

1) General deterrence aims for punishment to have an impact on the behavior of others outside the perpetrator. In other words, the threat of a minimum sentence is expected to create fear in others not to commit similar acts, considering that the sentence imposed on the perpetrator will certainly be heavier due to the provision of the minimum limit;

2) Specific prevention refers to the direct impact of punishment felt by the convict, both physically and psychologically. It is hoped that through punishment with a minimum limit, the convict can become a better individual in the future, so that he will not repeat the same crime.

The effort of Law Number 35 of 2009 to combine general and specific prevention is to create a justice system that not only punishes, but also prioritizes prevention and rehabilitation aspects, so that it can contribute to reducing drug abuse and improving the quality of society as a whole.

Furthermore, the criminal sanctions regulated in Law Number 35 of 2009 can be found in Articles 111 to 148. The criminal law policy relating to sanctions, punishment, actions and aggravation in the law includes several things, as follows:<sup>10</sup>

1) The sanctions applied consist of criminal sanctions and action sanctions;

2) Criminal sanctions include principal penalties, which consist of: the death penalty, life imprisonment, imprisonment for a certain period of time, imprisonment, fines, as well as additional penalties in the form of revocation of certain rights for corporations, including revocation of business licenses and/or legal entity status; The existence of articles regulating special minimum criminal threats is not only found in Law Number 35 of 2009, but also in other laws, such as the Corruption Eradication Law and the Human Rights Court Law. The laws and regulations in force in Indonesia are, in many ways, influenced by international trends.

According to Muladi, the development of specific minimum sanctions for certain crimes is one of seven international trends.<sup>11</sup> The 7 (seven) international tendencies are as follows:<sup>12</sup>

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<sup>9</sup>Sudarto. (1991). *Selected Chapters on Criminal Law*. Bandung: Alumni, p. 108.

<sup>10</sup>Dahlan, op.cit., pp. 62-63.

<sup>11</sup>Muladi. (2002). *Human Rights, Politics, and the Criminal Justice System*. Semarang: Diponegoro University Publishing Agency, p. 15.

<sup>12</sup>Ibid., p. 155.

- 1) The tendency to seek alternative sanctions other than imprisonment (alternative sanctions);
- 2) Development of specific minimum sanctions for certain criminal offences;
- 3) Application of a cumulative criminal system for certain crimes;
- 4) Polarization against the death penalty;
- 5) Development of sanctions for corporations;
- 6) Implementation of a double track system;
- 7) Special provisions regarding the criminal system for children.

Muladi explained that the development of specific minimum sanctions for certain crimes aims to reduce disparities in sentencing and reflect the severity of the crime in question.<sup>13</sup> This is in line with the opinion of Barda Nawawi Arief, who stated that the need for this special minimum sanction arose from public unrest and citizen dissatisfaction with the prison sentences that have been applied in practice, especially related to the insignificant difference in sentences between perpetrators of serious crimes and perpetrators of minor crimes.<sup>14</sup>

The role of Judges in imposing sanctions under the special minimum threat is clearly explained in the Circular of the Supreme Court (SEMA) Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as a Guideline for the Implementation of Duties for Courts and other SEMAs. This SEMA is a legal instrument issued by the Supreme Court of the Republic of Indonesia. The purpose of SEMA is to be a guide for Judges in carrying out their duties and authorities.

The phenomenon of the imposition of sentences below the minimum threat by judges in narcotics crimes raises various questions regarding the consistency of law enforcement in the criminal justice system, as in the case examples in this study:

- 1) Defendant Ahmad Maulana Ilham

Decision Number: 1072/Pid. Sus/2023/PN Dps in conjunction with Decision Number: 16/PID. SUS/2024/PT DPS, states that:

- a. The defendant Ahmad Maulana Ilham mentioned above has been proven legally and convincingly guilty of committing a criminal act without rights or

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<sup>13</sup>Ibid., p. 156.

<sup>14</sup>Barda Nawawi Arief. (1997). *The Criminal Problem of Deprivation of Liberty in the New Criminal Code, Legal Problems, Special Edition Number*. Semarang: Diponegoro University, p. 84.

against the law of possessing, storing and controlling Class I Narcotics which are not plants, as per the second alternative charge;

b. Sentencing the defendant to a prison sentence of 2 (two) years and a fine of IDR 800,000,000.00 (eight hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 (three) months.

The indictment submitted by the Public Prosecutor refers to Article 112 paragraph (1) of Law Number 35 of 2009, which regulates the possession of class I narcotics. In this Article, the minimum criminal threat for this violation is 4 years imprisonment, however in the Judge's decision, the defendant was sentenced to 2 years imprisonment, which is clearly below the minimum threat stipulated by law.

The considerations underlying the Judge's decision to impose a sentence below the minimum threat in the verdict against Ahmad Maulana Ilham include:

a. The evidence found was relatively little;

The judge noted that the evidence found on the defendant was relatively small, namely with a net weight of 0.12 grams. This was stated in the verdict that the evidence found did not indicate that the defendant was involved in a larger drug trafficking network, therefore the judge was of the opinion that the sentence imposed should not be solely based on the minimum threat, but also consider the context and severity of the violation.

b. Focus on rehabilitation;

The legal system in Indonesia emphasizes that sentencing is not only intended to punish, but also to provide guidance for the perpetrator. The judge argued that by imposing a lighter sentence, there is hope that the defendant can undergo a rehabilitation process and realize the mistakes that have been made. This is in line with the modern approach to law enforcement which prioritizes rehabilitation rather than just punishment.

c. Disparity in sentencing;

The judge also considered the potential for disparity in sentencing. In his ruling, the judge highlighted that if the sentence imposed for a violation with evidence of 0.12 grams is 4 years, then questions will arise regarding the length of the sentence that should be imposed for a violation with much larger evidence.

d. Circular Letter of the Supreme Court Number 3 of 2015.

In his considerations, the Judge also referred to the Supreme Court Circular Letter Number 3 of 2015 which provides guidelines on the implementation of fair and proportional decisions, so that the decision to impose a sentence below the

minimum threat is also based on a broader legal framework that prioritizes justice.

## 2) Sahrudin

Decision Number: 847/Pid. Sus/2023//PN Dps in conjunction with Decision Number: 129/PID. SUS/2023/PT DPS in conjunction with Decision Number: 4217 K/Pid. Sus/2024, states that:

- a. The defendant Sahrudin was proven legally and convincingly guilty of committing the crime of “unlawfully or unlawfully possessing or controlling class I narcotics that are not plants”;
- b. Therefore, the defendant Sahrudin is sentenced to 1 (one) year and 2 (two) months in prison and a fine of Rp. 800,000,000.00 (eight hundred million rupiah), with the provision that if the fine is not paid, it will be replaced with 2 (two) months in prison.

Based on the indictment filed by the Public Prosecutor, the defendant was charged with violating Article 112 paragraph (1) of Law Number 35 of 2009, which regulates the possession of class I narcotics that are not plants. In the indictment, the criminal threat for this violation is a minimum of 4 years in prison, however the Judge sentenced him to 1 year and 2 months in prison, which is clearly below the minimum threat.

the argument of rehabilitation, can be considered a step that is not in accordance with the indictment. This has the potential to reduce the deterrent effect of the sanctions that should be applied, and can lead to repeat criminal acts by the offender. The judge should consider the social impact of his decision, especially in cases involving narcotics.<sup>15</sup>

Law Number 35 of 2009 does stipulate minimum criminal sanctions for crimes related to class I non-plant narcotics. The law stipulates that violations committed, such as possessing, storing, or controlling narcotics, must be subject to sanctions that reflect the seriousness of the violation. The minimum criminal sanctions aim to provide a deterrent effect and maintain social order.

In the verdict of the defendant Ahmad Maulana Ilham, the Judge sentenced him to 2 years in prison. This sanction is clearly below the minimum penalty that should be applied according to the provisions of the Law. Likewise in the case of Sahrudin, where the Judge sentenced him to 1 year and 2 months in prison. Once again, this sanction is below the minimum penalty stipulated in the Law. This decision creates the impression that violations of Law Number 35 of 2009 are not always responded to with strict sanctions, which should be the main objective of

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<sup>15</sup>I Putu Gede Sumariartha Suara, SH, MH, Interview, as Functional Prosecutor of the Bali High Prosecutor's Office, March 12, 2025.



the implementation of this law. This raises questions about the consistency of law enforcement, because the Judge's decision to impose sanctions below the minimum penalty can be considered a form of relaxation of the provisions that have been set.

The imposition of a verdict below the minimum penalty by the Judge in a narcotics crime case is a practice that needs to be observed carefully. Although there is room to consider justice and humanity, the Judge must still adhere to the existing legal principles, therefore, it is important for the Judge to make mature considerations so that the decision taken not only meets the legal aspects, but also social justice.

### **3.2. Implications of Judges' Imposition of Sentences Below the Minimum Sentence in the Enforcement of Indonesian Narcotics Crime Law**

Law enforcement against drug crimes in Indonesia is a complex and multifaceted issue, involving various legal, social, and public policy aspects. In recent decades, Indonesia has faced serious challenges related to drug abuse and distribution, which have significant impacts on public health and national security.

Public dissatisfaction arises from the quality of the judicial process, which is one of the efforts in law enforcement in Indonesia. Many people feel that the legal process is slow, not transparent, and often unfair. In the case of narcotics crimes, for example, there is an assumption that the investigation and prosecution process is not carried out with adequate professionalism.

Public dissatisfaction increases when there is disparity in the imposition of sanctions. The public often sees injustice in the application of the law, where violators from certain social or economic backgrounds receive lighter treatment compared to other violators. For example, in the imposition of sentences below the minimum threat, despite the argument of rehabilitation, it can create the perception that the law is not applied consistently and fairly.<sup>16</sup>

The public also expressed dissatisfaction with the approach that emphasizes punishment rather than rehabilitation. In many cases, drug users who should receive rehabilitation treatment are often treated as ordinary criminals. This not only harms the individual, but also has a negative impact on society as a whole, because it ignores the health and welfare aspects of society.

The current disturbing conditions in society are not only focused on dissatisfaction with judicial practices, but more broadly, namely dissatisfaction with law enforcement as a whole. Law enforcement in this context includes the implementation of all norms and orders that apply in community life. In this case,

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<sup>16</sup>I Putu Gede Sumariartha Suara, SH, MH, Interview, as Functional Prosecutor of the Bali High Prosecutor's Office, March 12, 2025.

it can be stated that various forms of irregularities, such as untruth, injustice, abuse of power, and favoritism, are the most significant sources of unrest for society. The uncertainty and injustice that arise from violations of these norms not only damage public trust in legal institutions, but also disrupt social stability and create uncertainty in everyday life.<sup>17</sup>

In law enforcement, there are various components that influence each other. Not only the substance of the law is reflected in the laws and regulations, but also the actions of law enforcement officers and the culture of society that have a crucial role in realizing the supremacy of law. No matter how great the law is formulated, if the human factor does not have the awareness and commitment to implement it, then the objectives of the law which include justice, benefit, and legal certainty will never be achieved, therefore collective awareness and active participation from all elements of society are very important in creating an effective and just legal environment.

1) Weaknesses in terms of legal substance;

a. Law Number 35 of 2009 does not regulate provisions regarding criminal threats below the minimum sentence that can be used as a reference by judges in issuing decisions;

The weakness in terms of legal substance related to Law Number 35 of 2009 can be seen from the ambiguity and shortcomings in the regulation regarding criminal threats below the minimum threat. In Law Number 35 of 2009, there are provisions that determine the minimum criminal threat for narcotics-related violations, but it is not explicitly regulated regarding the conditions or criteria that can be used as a reference for Judges in making decisions below the minimum threat.

The absence of clear provisions and guidelines regarding certain situations or conditions that allow Judges to impose sentences below the minimum threat, then Judges have a wide interpretation room in interpreting the law. This can result in inconsistent decisions, where one Judge can impose a lighter sanction than another Judge in a similar case. This uncertainty creates disparities in law enforcement, which can harm justice and create dissatisfaction among the community.

The absence of specific provisions regarding the threat of criminal penalties below the minimum provides an opportunity for Judges to make subjective interpretations in deciding a case. This has the potential to produce decisions that do not always reflect the expected principles of justice. For example, Judges may consider factors such as the defendant's social or economic background,

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<sup>17</sup>Barda Nawawi Arief. (2009). Problems of Law Enforcement and Crime Policy. Bandung: Citra Aditya Bakti, p. 21.

which should not be the main basis for imposing sanctions. This overly broad interpretation can give rise to the perception that the law can be influenced by external factors, thereby reducing public trust in the justice system.

The ambiguity in the substance of the law regarding criminal threats also has a negative impact on the effectiveness of law enforcement. Sanctions imposed below the minimum threat can reduce the expected deterrent effect of criminalization. The public may feel that violations of Law Number 35 of 2009 will not be responded to with strict sanctions, which can encourage further criminal behavior. In this context, weak legal substance has the potential to create an environment where violations of the law become more common, and the main objective of the law to protect the public from the dangers of narcotics is not achieved.

b. There is a Circular Letter from the Supreme Court which allows judges to impose sentences below the minimum sentence.

Supreme Court Circular (SEMA) Number 3 of 2023, along with several previously issued SEMAs, provide Judges with the opportunity to impose sentences below the minimum criminal threat set, by considering a number of specific factors, especially those related to perpetrators of narcotics crimes. The SEMAs include:<sup>18</sup>

- 1) SEMA Number 7 of 2009, states that in the case where the defendant is not caught red-handed, is not using drugs and the evidence is relatively small and the urine test is positive, but is not charged with Article 127 of Law Number 35 of 2009, then the defendant is categorized as a drug abuser for himself;
- 2) SEMA Number 4 of 2010, which states the criteria for drug abusers who must undergo rehabilitation;
- 3) Circular Letter Number 3 of 2015, which states that if the defendant is charged with Article 111 or Article 112 of Law Number 35 of 2009, but what is proven is Article 127 of Law Number 35 of 2009 which was not charged as per the criteria of evidence in Circular Letter Number 4 of 2010, then the Judge can decide according to the indictment, but deviate from the special minimum sentence with sufficient consideration;
- 4) SEMA Number 1 of 2017 shows that the Supreme Court is consistent with SEMA Number 3 of 2015;
- 5) SEMA Number 3 of 2023 also applies to the defendant, who was charged under Article 114 paragraph (1) of Law Number 35 of 2009.

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<sup>18</sup>Putu Gde Novyartha, SH, M.Hum., Interview, as Judge/Chairman of Tabanan Class IB Court, March 19, 2025.

The SEMA provides direction to Judges to consider imposing sentences below the minimum sentence in certain cases, which should be an internal consideration in the judicial process, however the implementation of this SEMA has a number of substantial weaknesses that have the potential to disrupt law enforcement, particularly in the context of narcotics crimes.

The existence of SEMA which allows Judges to impose sentences below the minimum threat, creates uncertainty in law enforcement. This can lead to differences in handling similar cases, where one Judge imposes a lighter sentence, while another Judge follows stricter legal provisions. This uncertainty has the potential to create the perception that the law is not being applied consistently.

This SEMA can be considered to weaken the effectiveness of the law in combating narcotics crimes. The minimum criminal threat stipulated in the law aims to provide a deterrent effect to violators, so by providing space for Judges to impose sentences below the minimum threat, this SEMA has the potential to reduce the expected deterrent effect of the legal provisions.

The implementation of SEMA which allows judges to lower sentences can open up opportunities for abuse of authority. Judges may impose lighter sentences based on subjective considerations that are not always transparent or objective. This can lead to injustice, especially for victims or the public who expect strict law enforcement against narcotics violations.

The implementation of SEMA can affect public perception of the justice system. If the public sees that drug offenders can be given much lighter sentences than those stipulated in the law, this can reduce public trust in the judiciary and the law as a whole. The public may feel that law enforcement is not serious about dealing with the drug problem, which is a serious issue in many countries.

## 2) Weaknesses in terms of legal structure;

### a. Independence of Judges;

Law Number 35 of 2009 provides provisions regarding the maximum and minimum limits in sentencing by Judges. Judges are given the freedom to determine the sentence imposed. This situation has the potential to cause differences in sentencing, known as disparity. One of the factors causing disparity in sentencing comes from the law itself, where the existence of minimum and maximum limits allows for variations in sentences, so that Judges have the freedom to impose sanctions that they deem appropriate.

Disparities in sentencing in narcotics cases are casuistic in nature, meaning that sentencing decisions are determined based on the specific characteristics of each case. There are various considerations that can aggravate or mitigate

punishment, so that even though the cases faced are the same, the sentences imposed can vary.<sup>19</sup>

As previously mentioned, Law Number 35 of 2009 regulates the maximum and minimum criminal penalties for perpetrators of narcotics crimes in several of its articles. In fact, there are certain articles that only stipulate the maximum limit without including the minimum limit. For example, in Article 127 paragraph (1) of Law Number 35 of 2009, it is stated that:

Every abuser:

- a. Using class I narcotics for oneself is punishable by a maximum prison sentence of 4 (four) years;
- b. Using class II narcotics for oneself is punishable by a maximum prison sentence of 2 (two) years;
- c. Using class III narcotics for oneself is punishable by a maximum prison sentence of 1 (one) year.

The discretion that the Judge has in determining this sentence, although it provides flexibility, can also result in legal uncertainty, where the perpetrator of the crime may not receive a sentence that is commensurate with his actions. This shows that although the law provides guidelines, its implementation, in practice, is often influenced by the individual policies of the Judge.

In the context of sentencing, judges must consider various factors, such as:<sup>20</sup>

- 1) Aggravating factors include, but are not limited to, the nature and impact of the crime, whether the perpetrator has a previous criminal history, and whether there are victims who have suffered as a result of the act;
- 2) Mitigating factors may include the perpetrator's personal circumstances, such as age, mental health, or whether the perpetrator shows remorse for their actions.

Disparities in sentencing can lead to injustice in the eyes of the public, where individuals with similar cases may not receive the same treatment. This can reduce public trust in the justice system, which is supposed to provide equal justice for all.

Overall, the ambiguity in the regulation of the threat of punishment in Law Number 35 of 2009, as well as the existence of maximum and minimum limits,

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<sup>19</sup>Putu Gde Novyartha, SH, M.Hum., Interview, as Judge/Chairman of Tabanan Class IB Court, March 19, 2025.

<sup>20</sup>Putu Gde Novyartha, SH, M.Hum., Interview, as Judge/Chairman of Tabanan Class IB Court, March 19, 2025.

provides room for judges to operate in a manner that can lead to disparities in sentencing.

b. Lack of evaluation and monitoring of decisions made by judges in narcotics crime cases.

The lack of evaluation and monitoring of decisions made by judges in drug cases is one of the structural weaknesses in the legal system that has a significant impact on law enforcement. This weakness has the potential to reduce the effectiveness of law enforcement and create injustice in society.

Without a systematic evaluation and monitoring mechanism, it is difficult to ensure that decisions made by judges are consistent and in accordance with applicable legal principles. The imposition of decisions below the minimum penalty without adequate supervision can result in disparate treatment of similar cases. This creates legal uncertainty, where defendants can receive widely varying sentences depending on the judge handling the case. This uncertainty can damage public confidence in the justice system and the law.

Inadequate evaluation and monitoring also have implications for the accountability of judges. Without effective supervision, judges may feel that they do not need to be held accountable for their decisions, especially in cases where sentences are below the minimum penalty. This can cause judges to make decisions that are based more on subjective factors or external pressures, rather than on objective facts and evidence. As a result, the decisions taken can be detrimental to the justice and integrity of the legal system.

Lack of evaluation of the decisions made can reduce the effectiveness of law enforcement in dealing with drug crimes. If judges routinely impose sentences below the minimum criminal threat without proper consideration, then the purpose of legislation that wants to provide a deterrent effect to violators can be ignored. This has the potential to increase the number of drug crimes, because violators feel that they can avoid heavier sanctions. As a result, society will be increasingly threatened by uncontrolled drug trafficking.

The views of Lawrence M. Friedman and Oliver Wendell Holmes are in line with the explanation contained in the 1945 Constitution of the Republic of Indonesia, which emphasizes that the crucial aspect in the implementation of government lies in the spirit and commitment of state administrators, including law enforcement officers.

When a Judge makes a decision, the Judge must be able to integrate an understanding of legal norms with existing social realities. This requires the Judge to have a strong commitment to justice and humanity, and to understand the implications of every decision taken. In this case, the Judge's spirit and

commitment to apply the law wisely and fairly will greatly determine the quality of law enforcement in Indonesia.

The judge's decision must reflect the aspirations of the community for justice, as mandated by the 1945 Constitution of the Republic of Indonesia, thus the judge does not only act as an interpreter of the law, but also as an agent of social change that can bring positive impacts to the community. It is very important for judges to continue to improve their understanding and awareness of the values of justice, so that the decisions taken not only fulfill the legal aspect, but also fulfill the community's expectations for substantive justice.

In an effort to enforce the law and ensure the creation of legal certainty, justice, and benefits for the community, the actions and behavior of law enforcement officers need to be regulated formally. This is important so that they do not conflict (*contra legem*) with the provisions in force in the law. In other words, law enforcement officers, as parties under the law, are not only required to understand and implement the law, but must also be able to protect it. Basically, the law functions to protect the community, not the other way around. As expressed by Lord Sankey, the law must not only be implemented, but must also be felt by the community (justice must not only be done but it must be seen to be done).<sup>21</sup>

Overall, the imposition of criminal sanctions in Law Number 35 of 2009 must reflect a balanced approach between retribution and rehabilitation, which is the main characteristic of the theory of combined/modern criminal purposes, so that by integrating these elements, it is hoped that the legal system can be more effective in dealing with narcotics crimes, while also providing opportunities for perpetrators to improve themselves and contribute positively to society.

#### **4. Conclusion**

The practice of imposing sentences below the minimum sentence by judges in enforcing Indonesian narcotics crime law reflects the complexity and dynamics between legal certainty and justice. The phenomenon where judges impose sentences below the minimum sentence can create disparities in law enforcement. This has the potential to damage public trust in the justice system, because the public will feel that the law is not being applied fairly and consistently. If the judge does not provide an adequate explanation for the decision, then doubts will arise regarding the objectivity and integrity of the judicial process.

#### **5. References**

##### **Journals:**

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<sup>21</sup>*Ibid.*, pp. 103-104.



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