

Disparity In Law Enforcement in the Application of Minimum Criminal Penalties to Perpetrators of Narcotics Crimes (Case Study in the Jurisdiction of Hulu Sungai Tengah Regency)

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Abstract. *This study aims to identify and analyze the main causes of the discrepancy between the minimum criminal charges imposed by the Public Prosecutor at the Hulu Sungai Tengah District Attorney's Office, which are guided by Law Number 35 of 2009 concerning Narcotics and Regulation of the Attorney General of the Republic of Indonesia Number 24 of 2021 concerning Handling of General Criminal Cases, and the Supreme Court's cassation decision, which actually imposes a sentence below the minimum limit. This study also examines and analyzes the disparity between court decisions and the Narcotics Law, which affects the effectiveness of law enforcement against narcotics crimes at the Hulu Sungai Tengah District Attorney's Office. This study uses a qualitative approach with an empirical juridical method. Based on the research, it is concluded that the disparity between the minimum criminal charges imposed by the Public Prosecutor and the Supreme Court's cassation decision is mainly caused by differences in perspective: prosecutors are bound by normative obligations based on the Narcotics Law and Regulation 24/2021, while judges use their independence to emphasize substantive justice, legal facts, the defendant's condition, and humanitarian principles. These differing approaches create uncertainty in the application of narcotics laws and highlight the gap between the law on paper and the law in action. At the Hulu Sungai Tengah District Attorney's Office, the disparity between cassation decisions imposing sentences below the minimum limit and prosecutors' obligations to prosecute according to the minimum limit has implications for the effectiveness of law enforcement. The tension between legal certainty and substantive justice creates a lack of synchronization in the implementation of norms and has the potential to shift the strategic role of prosecutors as guardians of legal certainty. Therefore, affirmation of the application of minimum sentences is necessary to ensure consistency, certainty, and effectiveness in law enforcement that is just and oriented toward the public interest.*

Keywords: *Disparity; Law; Enforcement; Narcotics; Prosecutor.*

1. Introduction

Drug abuse is considered highly disturbing and has negative impacts. The government has issued a warning declaring Indonesia a state of emergency regarding narcotics. With this warning, drug users, buyers, and dealers should face severe sanctions. One of the sanctions imposed on drug abusers is imprisonment. (Gusti Ayu Novira Santi, 2019) Narcotics are a diverse group of substances or drugs, both derived from plants and man-made. These substances have powerful psychoactive effects, can cause altered consciousness, loss of pain sensation, and lead to physical and psychological dependence. The law classifies narcotics based on their level of danger. Despite their medical benefits, narcotic abuse can have detrimental effects on individuals, families, and society at large. Therefore, narcotic use must be carried out under strict medical supervision and in accordance with applicable laws. (Ide Prima Hadiyanto, 2023)

The Narcotics Law contains specific provisions regarding the minimum penalties that must be imposed on drug offenders. Both imprisonment and fines have minimum limits that must be met. These regulations aim to deter offenders and protect the public from the dangers of drug abuse. According to Barda Nawawi Arief, these special minimum penalties are applied to types of drug crimes that are particularly dangerous or have a very negative impact on society. (Arief, 2015) By setting the lowest possible sentence, it is hoped that all judges will render balanced decisions for the same crime. This aims to avoid significant differences in sentences. However, in reality, there are still many cases where judges impose very different sentences for similar cases. (Samekto, 2008) In his work, Darji Darmodiharjo asserts that the existence of law is highly dependent on legal certainty. If legal certainty is not guaranteed, the law cannot function as it should. (Shidarta, 1996)

Criminal decisions recognize the existence of a gap in sentencing, better known as disparity. Disparity is the application of unequal punishment (disparity of sentencing) or to crimes of comparable dangerous nature without a clear basis for the imposition. Disparity in sentencing is perceived by the public as evidence of the absence of justice (societal justice). From a formal legal perspective, this condition cannot be considered a violation of the law. However, people often forget that the element of justice must essentially be inherent in the decisions rendered by judges. (Hamzah, 2001)

However, in the practice of law enforcement by the Hulu Sungai Tengah District Attorney, a number of decisions were found that imposed sentences below the minimum limit stipulated by Law Number 35 of 2009 concerning Narcotics. This can be seen in several cases where the cassation decision at the Supreme Court

level actually gave sentences below the minimum threshold as follows: First, Decision 9922 K / Pid.Sus / 2025. The defendant was arrested with 4 packages of crystal methamphetamine (0.31 g net) and packaging tools. 2 g of crystal methamphetamine was purchased and then packaged for sale. Cassation decision: the sentence was revised to 2 years in prison and a fine of IDR 800 million. Second, Decision 2090 K / Pid.Sus / 2025 The defendant was found carrying 4 packages of crystal methamphetamine (1.67 g net), scales, plastic clips, and money from the sale. Bought 5 g of crystal methamphetamine and resold it. Cassation decision: the sentence was reduced to 3 years in prison and a fine of IDR 800 million. Third, Decision 4822 K/Pid.Sus/2025 The defendant was arrested with 1 package of methamphetamine (0.12 g net). Bought 2 packages together and had not yet used them, cassation decision: sentence to 2 years in prison and a fine of IDR 800 million. Fourth, Decision 3445 K/Pid.Sus/2025. The defendant had 4 packages of methamphetamine (2.37 g net) and packaging tools and was selling 1 package when arrested. Cassation decision: sentence to 3 years in prison + a fine of IDR 1 billion. Fifth, Decision 2283 K/Pid.Sus/2025. The defendant was carrying 21 packages of methamphetamine (4.41 g gross) that had not been sold. Cassation decision: sentence to 4 years and 6 months in prison and a fine of IDR 1.2 billion.

This recorded phenomenon actually signals a serious danger to legal certainty. Although the prosecutor's demands consistently met the minimum criminal penalty threshold under the Narcotics Law, the Supreme Court, in its cassation decision, actually reduced the sentence below the expressly established limit. This trend raises profound questions about legal uncertainty, judicial inconsistency, and the potential weakening of criminal deterrence, which should be strengthened within the national legal system.

This trend aligns with the findings of several previous studies that also highlighted the inconsistency in the application of minimum sentences in narcotics cases. Therefore, before delving into further analysis, it is necessary to first review several related studies that have addressed this phenomenon. Based on research by Berliandista Yustianjarnimas Irianto entitled *Disparity in Criminal Sentences for Narcotics Abusers*, it was concluded that differences in sentences in narcotics abuse cases do not constitute disparity if they are based on a legitimate differentiating factor, namely the presence of an Assessment Letter from the Integrated Assessment Team. Decisions 28/Pid.Sus/2015/PN Krg and 2823 K/Pid.Sus/2015 did not meet the requirements for rehabilitation because they did not have an Assessment Letter and were not proven positive for narcotics use, thus they were not eligible for rehabilitation. Conversely, Decision 1349/Pid.Sus/2015/PN Jkt imposed rehabilitation because all requirements were met, including the presence of an Assessment Letter, positive test results, and the evidence limit according to the provisions.(Irianto, 2020)Furthermore, research conducted by Dodo Suhada, entitled "Distortion of Law Enforcement in the Form

of Disparity in Decisions for Narcotics Crimes and Solutions to Overcome Them," concluded that the disparity in decisions in narcotics crimes in this study was caused by the unequal criminal charges themselves. This condition distorts law enforcement because it creates legal uncertainty and opens up opportunities for abuse of authority by officials. One solution to overcome this distortion is to set minimum and maximum limits on demands and criminal sentences for types of narcotics crimes that occur frequently, based on decisions that have permanent legal force. However, the determination of these limits must still be accompanied by exceptions for certain cases with special characteristics.(Suhada, 2019)Furthermore, research conducted by Sari Wiranarta entitled Disparity in Sentencing of Narcotics Crime Perpetrators (Analysis of Decision Number: 898 / Pid.Sus / 2020 / PN. Pdg and Decision Number: 940 / Pid.Sus / 2020 / PN. Pdg) concluded that the disparity in sentences in Decision Number: 898 / Pid.Sus / 2020 / PN. Pdg and Decision Number: 940 / Pid.Sus / 2020 / PN. Pdg occurred because of differences in evidence and evidence that the judge considered not to stand alone in each case. In addition, differences in decisions are also influenced by the judge's consideration of individual aggravating and mitigating factors, so that each perpetrator is assessed based on different conditions and circumstances, in line with the principle of individualization of criminal law.(Wiranarta, 2022)The novelty of this research lies in its empirical mapping of the tension between the legal certainty binding on prosecutors and the substantive justice that forms the basis for judges' decisions to impose subminimum sentences. The focus on the practical consequences of this tension on the consistency of minimum sentence application, the role of prosecutors, and the effectiveness of law enforcement has not been addressed in previous research.

Disparities in law enforcement, particularly in the application of minimum sentences to drug offenders, are a clear manifestation of systemic disparities that have not been resolved. Although Law Number 35 of 2009 explicitly stipulates minimum sentences for offenders, in practice, not all law enforcement officials enforce them uniformly. This inconsistency not only reflects a weak commitment to the principle of legal certainty but also indicates excessively broad interpretation without concrete and binding sentencing guidelines. As a result, offenders who should be sentenced to minimum sentences are instead given leniency for reasons that are not always proportional. This gives the impression that law enforcement remains subjective and inconsistent with the spirit of firm and consistent drug eradication.(Haerul Mustofa, 2024)

Therefore, the author emphasizes the importance of accurately identifying the problem so that the phenomenon of disparity in the application of minimum sentences can be analyzed based on clear and measurable causes. This problem identification is necessary to focus the research direction and be able to answer fundamental issues related to the non-uniformity of decisions and their implications for legal certainty. This study aims to identify and analyze the main

causes of the discrepancy between the minimum sentence demands by the Public Prosecutor at the Hulu Sungai Tengah District Attorney's Office, which are guided by Law Number 35 of 2009 concerning Narcotics and Regulation of the Attorney General of the Republic of Indonesia Number 24 of 2021 concerning the Handling of General Criminal Cases, with the Supreme Court's cassation decision which actually imposes a sentence below the minimum limit. Also, to identify and analyze the disparity between court decisions and the Narcotics Law affecting the effectiveness of law enforcement against narcotics crimes at the Hulu Sungai Tengah District Attorney's Office.

2. Research Methods

This study uses an empirical juridical approach by combining legal data and field findings, and is descriptive-analytical in nature to describe and analyze the differences between prosecutors' demands and judges' decisions in narcotics cases. The research data consists of primary data through interviews with the Head of the Prosecution, Execution, and Examination Sub-Section at the Hulu Sungai Tengah District Attorney's Office and a judge at the Barabai District Court, and secondary data in the form of laws and regulations, literature, scientific journals, official documents, and online sources. Data collection was carried out through library research and interviews, then all data were analyzed qualitatively to connect normative provisions with law enforcement practices in the field.

3. Results and Discussion

3.1. The main cause of the discrepancy between the minimum criminal demands by the Public Prosecutor at the Hulu Sungai Tengah

District Attorney's Office which is guided by Law Number 35 of 2009 concerning Narcotics and Regulation of the Attorney General of the Republic of Indonesia Number 24 of 2021 concerning Handling of General Criminal Cases with the Supreme Court's cassation decision which actually imposed a sentence below the minimum limit.

Narcotics and illegal drug crimes today have become transnational in nature, carried out with high-level modus operandi and sophisticated technology. Law enforcement officers are expected to be able to prevent and overcome these crimes in order to improve the morality and quality of human resources in Indonesia, especially for the nation's future generations. (Sunarso., 2004) Criminal law enforcement, including law enforcement against narcotics crimes, is largely determined by the functioning of the criminal justice system institutions, namely the Police, Prosecutor's Office, Courts, and Correctional Institutions. (Atmasasmita, 2010)

The researcher presents the Supreme Court's decision on narcotics crimes in a table to classify the imposition of sentences below the minimum, especially from

the general criminal provisions that have been determined by the articles charged by the public prosecutor. First, Decision 9922 K / Pid.Sus / 2025. The defendant was arrested with 4 packages of crystal methamphetamine (0.31 g net) and packaging tools. 2 g of crystal methamphetamine was purchased and then packaged for sale. Cassation decision: the sentence was revised to 2 years in prison and a fine of IDR 800 million. Second, Decision 2090 K / Pid.Sus / 2025 The defendant was found carrying 4 packages of crystal methamphetamine (1.67 g net), scales, plastic clips, and money from the sale. Bought 5 g of crystal methamphetamine and resold it. Cassation decision: the sentence became 3 years in prison and a fine of IDR 800 million. Third, Decision 4822 K/Pid.Sus/2025 The defendant was arrested with 1 package of methamphetamine (0.12 g net). Bought 2 packages together and had not yet used them, cassation decision: sentence to 2 years in prison and a fine of IDR 800 million. Fourth, Decision 3445 K/Pid.Sus/2025. The defendant had 4 packages of methamphetamine (2.37 g net) and packaging tools and was selling 1 package when arrested. Cassation decision: sentence to 3 years in prison + a fine of IDR 1 billion. Fifth, Decision 2283 K/Pid.Sus/2025. The defendant was carrying 21 packages of methamphetamine (4.41 g gross) that had not been sold. Cassation decision: sentence to 4 years and 6 months in prison and a fine of IDR 1.2 billion.

Based on the data from the Supreme Court's cassation decisions, as outlined above, there is a significant difference between the demands of the Public Prosecutor and the court's decision, particularly at the cassation level. Public Prosecutors generally demand relatively long prison sentences and large fines in accordance with the provisions of the Narcotics Law. However, District Court decisions tend to impose sentences lower than those demanded, and in some cases, these are upheld by the High Court. Interestingly, at the cassation level, the Supreme Court often amends its previous decision by imposing a much lighter sentence, even in some cases even below the specific minimum sentence stipulated in the law. This reduction in sentences is apparent not only in cases with relatively little evidence, but also in cases with substantial evidence. This phenomenon indicates that the Supreme Court places greater emphasis on considerations of substantive justice, proportionality, and the defendant's condition than solely on the application of normative provisions, resulting in a disparity between the prosecutor's demands, the decisions of the first instance and appellate courts, and the decisions at the cassation level.

Disparity in the context of criminal law refers to differences or imbalances that may occur in sentencing decisions by courts. This disparity can involve variations in sentencing between similar cases or between defendants with similar characteristics. In the legal literature, the theory of disparity has been the subject of considerable debate and research, opening up discussions regarding the factors that may contribute to disparity and its impact on fairness in the criminal justice system, including:(Amrun, 2018)

First, the factors that can cause disparities in sentencing:

- a) Defendant characteristics. Personal factors of the defendant such as age, gender, race, economic status, and criminal history can play a role in disparities.
- b) The nature of the case, including characteristics such as the severity, intent, and specific circumstances, can influence a judge's assessment of appropriate punishment. Cases deemed more serious or requiring harsher punishments can result in disparities.
- c) Jurisdiction: Disparities can occur between jurisdictions. Local geographic and cultural factors can influence judges' and juries' views on appropriate punishment.
- d) A judge's profile, personality, personal values, and experience can play a role in sentencing. In some cases, disparities can arise from differences in judges' perspectives and individual approaches to justice.

Second, the impact of disparity on justice in the criminal justice system is

- a) Inequality in Justice: Disparities can lead to inequities in the justice system, where individuals with similar characteristics may receive very different sentences. This can undermine public confidence in justice.
- b) Legal Uncertainty: Disparities can create legal uncertainty, making it difficult to predict the penalties that will be imposed. This can make it difficult for defendants, lawyers, and the general public to understand the consequences of criminal acts.
- c) Social Impact, disparities in sentencing can have significant social impacts, particularly on communities that may feel unfair treatment by the justice system.(Ariyanti, 2023)

Based on the research findings, the author argues that in the criminal justice process, judges do have some freedom in determining the type and length of punishment imposed. However, this freedom is not absolute; rather, it must be framed by objective considerations based on the legal facts and the concrete circumstances of the case, such as the consequences of the defendant's actions, the losses incurred, the seriousness of the crime, and the perpetrator's personality. When compared to the Supreme Court's cassation ruling table, it appears that these objective considerations form the basis for cassation judges to impose sentences below the specific minimum provisions in the Narcotics Law. For example, in cases with relatively little evidence, the Supreme Court reduced the sentence to well below the prosecutor's demands on the grounds of proportionality between the act and the punishment. This reflects that although the law explicitly regulates the minimum sentence limit, judges still use their discretion to balance legal certainty with substantive justice. Thus, the phenomenon of cassation rulings below the minimum limit can be understood not

as a form of deviation, but as a manifestation of judicial independence that continues to observe the principles of objectivity in deciding cases.

The main cause of the discrepancy between the minimum criminal charges imposed by the Public Prosecutor at the Hulu Sungai Tengah District Attorney's Office and the Supreme Court's cassation decision, which imposed sentences below the minimum limit in narcotics cases, can be traced to several aspects related to the application of positive law. In drafting their indictments, Public Prosecutors are guided by the normative provisions stipulated in Law Number 35 of 2009 concerning Narcotics, which explicitly defines the minimum and maximum criminal penalties, particularly for narcotics abuse and illicit trafficking. Furthermore, Public Prosecutors are also required to comply with internal provisions as stipulated in Regulation of the Attorney General of the Republic of Indonesia Number 24 of 2021 concerning the Handling of General Criminal Cases, which emphasizes the principles of consistency, legal certainty, and proportionality in prosecution, including the prohibition on charging below the minimum limit stipulated by law.

From a normative perspective, prosecutors are strictly bound by the Narcotics Law and the Attorney General's Regulation, which emphasize the existence of special minimum sentences as a repressive instrument to suppress narcotics crimes. However, in practice, the Supreme Court bases its decisions not only on formal legal aspects but also considers non-normative or external factors, such as the defendant's age, the defendant's role in the narcotics distribution network, socio-economic background, and the urgency of rehabilitation. These considerations reflect the judiciary's efforts to prioritize the principles of substantive justice and proportionality of punishment, so that the sentences imposed are deemed more humane and appropriate to the concrete circumstances of the case. However, this paradigm difference also creates a discrepancy between the Public Prosecutor's demands, which are based on positive legal norms, and the cassation decision, which emphasizes the humanitarian dimension. In the context of law enforcement, this situation can be seen as a dilemma between normative legal certainty and contextual substantive justice.

The disparity between the minimum criminal charges filed by the Public Prosecutor and the court's decision, particularly at the cassation level, can be explained through the perspective of legal certainty theory. According to Sudikno Mertokusumo, legal certainty requires a guarantee that the law is implemented properly based on regulations established by the authorities. (Zainal, 2012) In the context of narcotics crimes, the minimum sentence is expressly stipulated in the Narcotics Law and should therefore serve as a legally binding guideline for judges. However, when judges issue sentences below the minimum sentence, the guarantee that the law functions as a norm that must be obeyed is compromised. Similarly, Jan Michiel Otto emphasized that legal certainty can only be achieved if

there are clear and consistent rules, dutifully applied by law enforcement officials, and consistently enforced by independent judges. Judges' deviations from the minimum sentence indicate a failure to consistently enforce the law by the judiciary. This undermines public trust in the integrity of the legal system, as legally binding rules are not properly enforced.(Sikti, 2023)

Thus, the primary cause of this disparity lies in the difference in orientation between the normative compliance demanded by the theory of legal certainty and the legal considerations and facts used by judges in deciding drug cases. The judge's considerations are a central element in the sentencing process. These considerations include an evaluation of other factors, such as the defendant's remorse, cooperation with the judicial process, and the possibility of rehabilitation. The defendant's demeanor during the trial and his or her responsibility for the actions taken are also taken into account by the judge. These differing approaches create uncertainty regarding how drug laws are applied and indicate a gap between the law on the books and the law in action.

3.2. Analysis of the disparity between court decisions at the cassation level and the Narcotics Law affects the effectiveness of law enforcement against narcotics crimes at the Hulu Sungai Tengah District Attorney's Office.

Determining minimum sentences in specific criminal laws is one way to prevent disparities in sentencing (differences in sentencing). Furthermore, this measure also aims to strengthen general deterrence and demonstrate the severity of the crime. In the context of minimum sanctions stipulated in articles concerning specific crimes, provisions regarding maximum and minimum criminal sanctions are clearly established, thus requiring no further interpretation. Disparity in sentencing refers to the application of different penalties for the same offense or offenses of comparable seriousness without a clear justification.(Dirdjosisworo, 2018)

In the provisions of Law Number 48 of 2009 concerning Judicial Power, independence is defined as freedom from the influence of the executive or any other state power and freedom from coercion, directives or recommendations coming from extra-judicial parties, as well as freedom from internal judicial influences in making decisions. The freedom/independence of judges itself is the power of an independent state to organize trials to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the rule of law of the Republic of Indonesia.(Sibarani, 2018)

Based on the analysis conducted by the author, the statement reflects the tension between the principles of legal certainty and substantive justice in judicial practice. Judges, under the provisions of Law Number 48 of 2009 concerning Judicial Power, are indeed granted independence in issuing decisions, including

when taking steps beyond the minimum criminal penalties normatively determined by law. At this point, it becomes necessary to reaffirm that judicial independence is not unlimited freedom, but must remain in accordance with statutory provisions. Although judges have freedom, their authority is still limited by statutory regulations. In examining cases in court, judges are bound by the indictment, and in imposing sentences, judges are limited by the minimum and maximum criminal penalties stipulated by law. The elements of the articles charged by the Public Prosecutor in the indictment are in accordance with the actions committed by the defendant.

A judge's considerations in handing down a verdict in a narcotics case must essentially be oriented toward a balance between legal certainty and justice. The verdict must reflect substantive justice, namely the proportionality between the severity of the crime and the sentence imposed. However, this substantive justice must not ignore the minimum sentence limits stipulated by law. This emphasis is increasingly relevant given that narcotics crimes are classified as extraordinary crimes that endanger the interests of the nation and state. Therefore, every judge's decision in a narcotics case impacts not only the perpetrator but also concerns the broader public interest, namely protecting society from the threat of narcotics abuse.(Sundari, 2024)

Based on data from the Supreme Court's cassation decisions in narcotics cases at the Hulu Sungai Tengah District Attorney's Office, there appears to be a pattern of inconsistencies between the Public Prosecutor's demands, the decisions of the *judex facti* (District Court and High Court), and the Supreme Court's rulings. This disparity is particularly evident in the prison sentences imposed, with the Supreme Court in several cases tending to impose sentences below the minimum limit stipulated in the Narcotics Law.

In the context of Soerjono Soekanto's theory of legal effectiveness, this disparity in decisions affects the legal substance factor where the rules contain minimum penalties, the law enforcement apparatus factor, namely related to prosecutors who must obey the rules, but their decisions are overturned by judges, and the legal culture factor looks at the public's perception of the firmness of the law.(Dayang Debby Aulia Hakim, 2021)The theory of legal effectiveness put forward by Soerjono Soekanto emphasizes that law can be said to be effective if the applicable norms are truly implemented and function in the practice of community life.(Soekanto, 1986)In the context of the disparity between cassation court decisions and the minimum criminal penalties stipulated in the Narcotics Law, a serious problem arises in the effectiveness of law enforcement. Based on the research findings, the author argues that this has the potential to undermine the authority of law enforcement officials, as it demonstrates that the prosecution process does not always result in decisions that comply with the law. Thus, the effectiveness of the law is compromised because, despite the availability of legal

instruments, their implementation is not consistently carried out by the judiciary. Furthermore, the impact of this disparity is also felt by the public. Given that narcotics crimes are classified as extraordinary crimes, the public demands firmness and consistency in their application. Sentences that are lighter than the minimum provisions create the perception that the law is lax and potentially undermine public trust in the justice system. This is where the effectiveness of the law weakens, as the law not only fails to provide certainty but also fails to fully satisfy the public's sense of justice. Thus, based on the theoretical framework of Soerjono Soekanto's legal effectiveness, the inconsistency of the cassation decision regarding the minimum criminal provisions in narcotics cases at the Hulu Sungai Tengah District Attorney's Office can be seen as an indicator that the law has not been fully implemented effectively in practice.

The judge's consideration is one of the most important aspects in realizing the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition to there are also benefits for the parties concerned so that the judge's consideration must be addressed carefully, well, and carefully. If the judge's consideration is not careful, well, and carefully, then the judge's decision derived from the judge's consideration will be overturned by the High Court or the Supreme Court.(Yunanto, 2019)

The disparity between the Supreme Court's cassation ruling and the minimum criminal penalties stipulated in Law Number 35 of 2009 concerning Narcotics has significantly impacted the effectiveness of law enforcement at the Hulu Sungai Tengah District Attorney's Office. Public Prosecutors, who, under the law and Attorney General Regulation Number 24 of 2021, are obligated to pursue charges in accordance with the minimum criminal penalties, face a gap between their normative demands and the final verdict, which ignores these minimum penalties.

Cassation judges who issue sentences below the minimum sentence limit essentially seek to uphold substantive justice, but this choice simultaneously ignores the legal certainty that is the primary objective of the minimum sentence rule. This situation demonstrates that the law is unable to consistently fulfill its role as an instrument of social control. This disparity in decisions also has implications for law enforcement authorities, particularly Public Prosecutors, who are legally obligated to prosecute according to the minimum sentence limit. When judges' decisions deviate from applicable provisions, a gap arises between normative demands and the final outcome of the judicial process.(Haerul Mustofa, 2024)

Based on the research findings, the author argues that this has the potential to undermine the authority of law enforcement officials because it demonstrates that the prosecution process does not always result in decisions that comply with the law. Thus, the effectiveness of the law is compromised because, despite the availability of legal instruments, their implementation is not consistently carried

out by the judiciary. Furthermore, the impact of this disparity is also felt by the public. Given that narcotics crimes are classified as extraordinary crimes, the public demands firmness and consistency in their application. Sentences that are lighter than the minimum provisions create the perception that the law is not firm and potentially undermines public trust in the justice system. At this point, the effectiveness of the law weakens, because the law not only fails to provide certainty but also fails to fully satisfy the public's sense of justice. Therefore, based on Soerjono Soekanto's theoretical framework of legal effectiveness, the inconsistency of cassation decisions regarding minimum criminal provisions in narcotics cases at the Hulu Sungai Tengah District Attorney's Office can be seen as an indicator that the law has not been fully implemented effectively in practice.

4. Conclusion

The disparity between the minimum sentence demanded by the Public Prosecutor and the Supreme Court's cassation decision is primarily due to the differing perspectives between the prosecutor's normative obligations as stipulated in Law Number 35 of 2009 concerning Narcotics and Attorney General Regulation Number 24 of 2021 and the independence of judges, who emphasize substantive justice, legal facts, the defendant's specific circumstances, and humanitarian principles. This creates a gap between the law on the books and the law in action. This disparity directly impacts the effectiveness of law enforcement at the Hulu Sungai Tengah District Attorney's Office due to the inconsistency between the prosecutor's demands, which must comply with the minimum sentence limit, and the judge's decision to impose a sentence below the minimum sentence limit. This creates tension between legal certainty and substantive justice and has the potential to shift the prosecutor's strategic function as an enforcer of the law and a guardian of legal certainty. Therefore, strengthening and reaffirming the application of the minimum sentence limit is necessary to align it with the normative objectives of the Narcotics Law in ensuring consistency, certainty, and effectiveness of just and public interest-oriented law enforcement.

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Regulation of the Attorney General of the Republic of Indonesia Number 24 of 2021 concerning the Handling of General Criminal Cases;

Decree of the Attorney General of the Republic of Indonesia Number 227 of 2022 concerning the Administration of General Criminal Cases.