

Analysis of Criminal Punishment of Narcotics Dealers from A Positive Criminal Law Perspective

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Abstract. *This study aims to analyze the criminalization provisions for drug dealers in positive criminal law in Indonesia, examine judges' considerations in sentencing in criminal justice practice, and assess the relevance of these criminalization policies from the perspective of national criminal law reform. The research focuses on the dynamics between the repressive approach in Law Number 35 of 2009 concerning Narcotics and the more humanistic and proportional approach in Law Number 1 of 2023 concerning the National Criminal Code. This study uses a normative legal research method with a statute approach, a case approach, and a conceptual approach. The data sources used include primary, secondary, and tertiary legal materials, which are analyzed qualitatively to gain a comprehensive understanding of the criminalization policy for drug dealers. The research findings indicate that the criminalization of drug dealers in Indonesia is comprehensive yet tends to be repressive, with heavy and layered sanctions. In judicial practice, judges consider legal, sociological, and philosophical aspects while adhering to the principle of individualization of punishment, although a punitive approach still tends to dominate.*

Keywords: *Criminalization; Narcotics Dealers; Positive Criminal Law.*

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state based on law. The concept of a state based on law implies that all aspects of social, national, and state life must be conducted based on applicable law. Law functions as an instrument to create social order, provide protection to society, and guarantee the achievement of the values of justice, legal certainty, and legal benefits. From the perspective of a modern state based on law, law is not only understood as a collection of norms that are mandatory, but also as a means to regulate social life so that it runs fairly and

harmoniously. Soerjono Soekanto stated that law has a function to create order in society and provide guidelines regarding the behavior that should be carried out by each individual in social life.¹

In the context of criminal law enforcement in Indonesia, one of the ongoing serious problems is narcotics crime, particularly the illicit trafficking of narcotics by dealers. Narcotics crimes not only impact individual users but also cause widespread damage to the social fabric of society. Narcotics have enormous potential to damage the physical and mental health of the younger generation and weaken the quality of a nation's human resources. Therefore, narcotics crimes are often categorized as extraordinary crimes that require serious handling through effective and comprehensive criminal law policies. Barda Nawawi Arief emphasized that narcotics crimes are a form of crime with broad social impacts, so their handling must be carried out through an integrated criminal law policy that combines penal and non-penal aspects.²

The illicit trafficking of narcotics in Indonesia also exhibits characteristics of complex and systemic organized crime. This crime is no longer committed individually, but rather involves structured and organized networks with systematic working patterns. In many cases, narcotics trafficking networks involve cross-border cooperation, thus categorizing it as transnational organized crime. Barda Nawawi Arief explained that transnational organized crime requires a comprehensive criminal law policy approach because it involves extensive networks, structured distribution systems, and operational mechanisms that are difficult for law enforcement to detect.³

In the structure of illicit drug trafficking, dealers play a crucial role as a link between drug dealers and consumers. Dealers play a crucial role in the distribution chain, which determines the success of drug trafficking in society. Without them, drug distribution would not reach a wide audience. Therefore, criminal sanctions against drug dealers are a key tool in efforts to break the chain of illicit drug trafficking. Appropriate criminal sanctions are expected to deter perpetrators and protect the public from the dangers of drugs.

In law enforcement practice, the criminalization policy for drug dealers in Indonesia has tended to be repressive. Law Number 35 of 2009 concerning Narcotics regulates various forms of severe criminal sanctions, including long-term imprisonment, life imprisonment, and the death penalty. Furthermore, the law introduces the concept of special minimum sentences, which limits judges' discretion in imposing sentences below the specified minimum limit. The primary objective of implementing special minimum sentences is to ensure that

¹Soerjono Soekanto. (2014). *Factors Influencing Law Enforcement*. Jakarta: Rajawali Pers, p. 5.

²Barda Nawawi Arief. (2016). *Anthology of Criminal Law Policy*. Jakarta: Kencana, p. 30.

³Barda Nawawi Arief. (2010). *Problems of Law Enforcement and Criminal Law Policy*. Jakarta: Kencana, p. 78.

perpetrators of drug crimes receive severe sentences, thus providing a deterrent effect and preventing similar crimes in the future.

However, the existence of specific minimum sentences in criminal justice practice often raises issues regarding the fairness and proportionality of sentencing. Judges are limited in considering the specific circumstances of the perpetrator, including the level of culpability, social background, and role of the perpetrator in the drug distribution network. In many cases, the role of the dealer is not always the same as that of the drug lord or network controller. Muladi emphasized that sentencing policies must adhere to the principle of individualization of punishment, namely that the punishment imposed must be tailored to the level of culpability and the personal circumstances of the perpetrator to achieve proportional justice.⁴

The predominance of drug cases in correctional institutions also demonstrates that a highly repressive criminal justice approach has not been fully effective in suppressing the illicit trafficking of narcotics. This situation demonstrates that combating drug crime cannot rely solely on a penal approach but also requires a more comprehensive criminal law policy approach. Lawrence M. Friedman explains that legal effectiveness is determined by three main elements: legal structure, legal substance, and legal culture. If these three elements do not function harmoniously, law enforcement will not be able to achieve its intended goals.⁵

Advances in information technology have also influenced patterns of illicit drug trafficking. Drug transactions are now often conducted through social media, instant messaging apps, and various digital payment systems that are difficult for law enforcement to track. This phenomenon demonstrates that drug crimes are transforming along with the development of modern technology. Mardjono Reksodiputro stated that the criminal justice system must be able to adapt to the development of modern forms of crime to keep up with the evolving *modus operandi* of criminals.⁶

In the context of national criminal law reform, the enactment of Law Number 1 of 2023 concerning the Criminal Code marks a paradigm shift in the Indonesian penal system. The National Criminal Code no longer positions punishment solely as a means of retribution against perpetrators of criminal acts, but rather as an instrument for achieving broader goals, namely protecting society, developing perpetrators, restoring social balance, and resolving conflicts arising from

⁴Muladi. (2002). *Selected Chapters on the Criminal Justice System*. Semarang: UNDIP Publishing Agency, p. 125.

⁵Lawrence M. Friedman. (1975). *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, p. 15.

⁶Mardjono Reksodiputro. (2007). *Criminology and the Criminal Justice System*. Jakarta: UI Center for Justice and Legal Services, p. 89.

criminal acts. This concept demonstrates that the penal system in the National Criminal Code prioritizes a more humanistic approach and is oriented towards substantive justice.

One of the significant changes in the National Criminal Code is the removal of specific minimum sentences as a general principle in the sentencing system. The National Criminal Code places greater emphasis on flexibility in sentencing and provides judges with greater latitude to consider various factors related to the perpetrator and their actions. This approach aligns with the development of modern criminal law theory, which emphasizes the importance of individualizing punishment. According to Sudarto, the purpose of punishment is not only to inflict suffering on the perpetrator, but also to reform the perpetrator and protect society from the possibility of future crimes.⁷

The removal of the concept of a specific minimum sentence from the National Criminal Code is also related to criticism by criminal law experts of the overly rigid sentencing system. An overly rigid sentencing system has the potential to reduce the independence of judges in issuing fair and proportional decisions. Satjipto Rahardjo emphasized that law should not be understood narrowly as a set of rigid rules, but rather as a means to realize substantive justice in society. From a progressive legal perspective, judges must have responsible freedom to interpret the law to achieve justice that is alive in society.⁸

However, the effectiveness of criminal justice policies in combating drug crimes remains a matter of debate among academics and legal practitioners. Criminal justice approaches that focus too heavily on punishment are often considered incapable of comprehensively addressing the root causes of drug crimes. In some cases, repressive approaches have even given rise to new problems, such as increasing prison inmates and the emergence of drug trafficking within the institutions themselves. This phenomenon demonstrates the need for critical review of criminal justice policies to ensure that the criminal justice system is truly capable of achieving its intended goals.

Within the framework of modern criminal justice theory, punishment is no longer understood solely as a means of retribution against criminals. It also serves to prevent future crimes, reform perpetrators, and protect society from the potential harms posed by criminal acts. Muladi explained that a modern criminal justice system must balance the interests of the perpetrator, the victim, and the broader community.⁹ Therefore, the criminalization policy for drug dealers must be designed proportionally to reflect substantive justice in criminal

⁷Sudarto. (1990). *Criminal Law I*. Semarang: Sudarto Foundation, p. 36.

⁸Satjipto Rahardjo. (2009). *Progressive Law: A Synthesis of Indonesian Law*. Yogyakarta: Genta Publishing, p. 15.

⁹Muladi. (2002). *Selected Chapters on the Criminal Justice System*. Semarang: Diponegoro University Publishing Agency, p. 65.

justice practices.

From a progressive legal perspective, law must adapt to the dynamics of societal development. Satjipto Rahardjo stated that law should not be understood as a static and rigid institution, but rather as a means to achieve a more just and humane life.¹⁰ The law must allow judges to interpret rules contextually to produce decisions that reflect society's sense of justice. This thinking is relevant in the context of the application of specific minimum sentences in the Narcotics Law, which often limits judges' discretion in imposing proportionate sentences.

The principle of individualization of punishment is a key principle in modern criminal law, emphasizing that punishment should be imposed based on the level of culpability and the individual circumstances of the offender. According to Andi Hamzah, judges must consider various factors related to the offender and their actions when sentencing to ensure that the punishment imposed truly reflects proportional justice.¹¹ Thus, a criminal justice system that is too rigid has the potential to hinder the realization of substantive justice in criminal justice practices.

In the context of national criminal law reform, the removal of the concept of specific minimum sentences from the National Criminal Code indicates a shift in the orientation of sentencing policy. The National Criminal Code provides judges with greater latitude to consider various aspects related to the perpetrator of a crime. This approach is expected to result in fairer and more proportional decisions, as judges have the freedom to objectively assess the level of culpability of the perpetrator and the circumstances underlying the crime.

However, this shift in the sentencing paradigm has also raised various issues in law enforcement practices, particularly regarding the harmonization of the National Criminal Code and various special laws that still maintain specific minimum sentence provisions, including the Narcotics Law. These differences in approach have the potential to create legal uncertainty and disparities in sentencing in judicial practice. Soerjono Soekanto stated that changes in legislation must be accompanied by readiness in the legal structure and legal culture to prevent disharmony in the legal system.¹²

Based on the description above, it can be seen that the criminalization policy for drug dealers is at a crossroads between the repressive approach that has been adopted in the Narcotics Law and a more flexible and humanistic criminalization approach as introduced in the 2023 National Criminal Code. This condition gives rise to the need to conduct an in-depth academic study on how criminalization

¹⁰Satjipto Rahardjo. (2009). *Progressive Law: A Synthesis of Indonesian Law*. Yogyakarta: Genta Publishing, p. 67.

¹¹Andi Hamzah. (2008). *Principles of Criminal Law*. Jakarta: Rineka Cipta, p. 140.

¹²Soerjono Soekanto. (2014). *Factors Influencing Law Enforcement*. Jakarta: Rajawali Pers, p. 8.

for drug dealers is applied in criminal justice practice and how this criminalization policy is viewed from the perspective of positive criminal law in Indonesia.

The need to discuss research on the Analysis of Criminalization of Narcotics Dealers in the Perspective of Positive Criminal Law is relevant to examine in depth the basis for judges' considerations in sentencing narcotics dealers, the differences in the criminal sanction system between the old Criminal Code and the National Criminal Code, as well as the juridical and philosophical reasons behind the elimination of the concept of special minimum sentences in criminal law reform in Indonesia.

2. Research Methods

This research uses a normative legal research method, a research method that positions law as a norm or rule that applies in society. Normative legal research is oriented towards the study of library materials or secondary data consisting of laws and regulations, court decisions, expert doctrines, and legal principles related to the research object. The main focus of this research is to analyze legal norms that regulate criminal policies and narcotics crimes through a systematic and comprehensive legal approach. According to Soerjono Soekanto, normative legal research is research conducted by examining library materials or secondary data as the main source of research, which includes primary legal materials, secondary legal materials, and tertiary legal materials. Normative legal research aims to discover legal principles, legal systematics, the level of legal synchronization, legal history, and comparative law.

3. Results and Discussion

3.1. Criminal Provisions for Narcotics Dealers in Positive Criminal Law in Indonesia

The criminal penalties for drug dealers under Indonesian positive criminal law are essentially regulated by *lex specialis* in Law Number 35 of 2009 concerning Narcotics, and supported by general provisions in Law Number 1 of 2023 concerning the National Criminal Code. These two legal instruments form a comprehensive criminal system to address drug crimes, which are categorized as extraordinary crimes.

The provisions in Law Number 35 of 2009 emphasize the criminalization of various acts related to the illicit trafficking of narcotics, such as offering, selling, purchasing, acting as an intermediary, storing, possessing, and delivering narcotics. The formulation of this offense implicitly includes the category of narcotics dealer, although the term "distributor" is not explicitly mentioned. This demonstrates that the lawmakers use an action approach as the basis for regulation, not solely the status of the perpetrator.

In terms of criminal penalties, Law Number 35 of 2009 concerning Narcotics establishes a system of severe, firm, and multi-layered sanctions in response to the organized and widespread nature of drug crimes. This regulation reflects a criminal law policy oriented toward protecting the public and creating a deterrent effect. The forms of punishment can be outlined as follows:

1. Imprisonment for a fixed term up to life imprisonment. Imprisonment is the most common form of punishment for drug crimes. The law regulates varying prison sentences, ranging from a certain minimum term to life imprisonment, depending on the type of crime, the class of drug, and the amount of evidence involved. The larger the scale of distribution and the higher the perpetrator's role in the network, the more severe the prison sentence imposed.
2. Large fines are imposed cumulatively with imprisonment. Fines for narcotics offenses are designed to be high to suppress the economic motives that are the primary drivers of illicit drug trafficking. This approach aims to deprive perpetrators of their profits and reduce the attractiveness of drug crimes as a lucrative illegal business. If fines are not paid, the law provides for the consequence of replacing them with additional imprisonment, thus reinforcing the repressive nature of these sanctions.

Overall, these three types of sanctions demonstrate that the criminal justice system for drug crimes is designed in a multi-layered manner to address various dimensions of crime, including individual freedom, economic issues, and community protection. This approach emphasizes that drug dealers are positioned as perpetrators with a high level of culpability, requiring firm and comprehensive legal action.

The main characteristic of this regulation is the differentiation of sanctions based on:

1. Types of narcotics (Class I, II, III),
2. Number of pieces of evidence,

This approach demonstrates that drug dealers are positioned as perpetrators with a high degree of culpability, as their actions have a widespread impact on society. Criminalization policies are aimed at creating a deterrent effect while also providing protection for the community.

Law Number 35 of 2009 also contains a cumulative nature of sentencing, where imprisonment can be imposed concurrently with a fine. Even if the fine is not paid, it can be replaced with an additional prison sentence. This demonstrates the strong legal pressure on drug dealers.

The National Criminal Code (Law No. 1 of 2023) introduces a new dimension to the criminal justice system. While the National Criminal Code does not

specifically address drug crimes, it does provide general sentencing guidelines that judges must consider, such as:

1. Principle of Proportionality
2. Criminal Individualization
3. As well as the balance between justice, utility, and legal certainty.

The National Criminal Code also introduces new types of punishment, such as supervision and community service, and repositions the death penalty as a special alternative punishment with a probationary period. This concept provides an opportunity for convicts to improve themselves, thus reflecting a more humane approach.

In the context of drug dealers, there is a dualism of approaches between:

1. The Narcotics Law tends to be repressive and retributive,
2. The National Criminal Code prioritizes a corrective, rehabilitative, and individualized criminal approach.

In practice, the principle of *lex specialis derogat legi generali* applies, so the provisions of Law Number 35 of 2009 remain the primary basis for sentencing drug dealers. The National Criminal Code serves as a complement, particularly in providing guidance to judges to ensure more proportional and just decisions are made.

The criminal provisions for narcotics dealers in Indonesian positive criminal law reflect an integral criminal law policy, namely:

1. Emphasizing firm (repressive) action against dealers as the main perpetrators of illegal narcotics trafficking
2. Integrating modern principles of criminal law through the National Criminal Code
3. Aiming at a balance between protecting society and respecting human rights.

All these regulations show that the Indonesian criminal law system strives not only to punish perpetrators, but also to maintain social stability and create balanced justice in dealing with narcotics crimes.

The author argues that the criminalization of drug dealers in Indonesian positive criminal law shows a tendency to over-reliance on a repressive approach, particularly in Law Number 35 of 2009. The imposition of severe and layered sanctions, such as long-term imprisonment, high fines, and even the death penalty, indeed reflects the state's commitment to eradicating the illicit

trafficking of narcotics. However, an approach that places too much emphasis on punishment has the potential to ignore the long-term effectiveness of reducing the number of drug crimes themselves.

The author believes that harsh sentencing policies are not necessarily in line with the primary objectives of criminal law, particularly in terms of prevention and rehabilitation. Empirical evidence shows that drug trafficking persists despite the threat of very high penalties, including the death penalty. This indicates that economic factors, organized networks, and weak oversight are variables that cannot be fully addressed by a penal approach alone.

The National Criminal Code, enacted through Law Number 1 of 2023, is crucial as a corrective instrument to address the rigidity of the criminal punishment system under the Narcotics Law. The author believes that the principles of individualization of punishment and proportionality espoused by the National Criminal Code should be more concretely integrated into the practice of sentencing drug dealers. This is crucial so that judges focus not only on the severity of the sanctions but also on the subjective circumstances of the perpetrator, such as the level of involvement, motive, and potential for rehabilitation.

The author argues that the established differentiation of sanctions is actually a progressive step in realizing substantive justice. However, in practice, this differentiation is often not optimally implemented, resulting in disparities in sentencing between sentences. More structured and implementable sentencing guidelines are needed so that the principle of differentiation truly reflects proportional justice.

The author also believes that classifying drug dealers as primary perpetrators with a high culpability rate is indeed relevant in the context of public protection. However, not all perpetrators classified as "distributors" hold the same position and role within the network. In many cases, perpetrators act solely as intermediaries or couriers with limited control and pressing economic motives. This situation should be a crucial consideration in determining the severity of the sentence.

3.2. Judges' Considerations in Sentencing Narcotics Dealers and Their Weaknesses from the Perspective of Justice and Criminal Law Reform

Judges' considerations in sentencing drug dealers are essentially a process of legal, philosophical, and sociological assessment to determine the appropriate form of criminal responsibility for perpetrators of drug crimes. In criminal justice practice, judges are guided not only by the provisions of Law Number 35 of 2009 concerning Narcotics but also by the principles of sentencing in Law Number 1 of 2023 concerning the National Criminal Code. These considerations are made to achieve a balance between legal certainty, justice, and legal expediency in

sentencing.

From a legal perspective, the judge first assesses whether the elements of the crime as defined in the article charged are fulfilled, including the act of possessing, controlling, selling, acting as an intermediary, or distributing narcotics. This assessment is based on valid evidence according to criminal procedure law, such as witness testimony, expert testimony, letters, clues, and the defendant's statement. The judge also considers the form of the offense, the level of the perpetrator's involvement, the type and quantity of narcotics, and the defendant's role in the illicit drug trafficking network.

Judges' considerations in practice are also influenced by the evolving objectives of sentencing in the reform of national criminal law. Judges no longer view punishment solely as a means of retribution, but also as an instrument for protecting society, preventing crime, and fostering the development of offenders. This principle aligns with provisions in the National Criminal Code, which emphasize individualization of punishment and proportionality in imposing criminal sanctions.

One example of judicial discretion in a narcotics case can be seen in Decision Number 202/Pid.Sus/2025/PN Sgr, handed down by the Singaraja District Court. In this case, the judge considered the application of the principles of the new Criminal Code through an approach that prioritizes proportionality and the principle of *lex favor reo*, namely the application of the law that is more favorable to the defendant in the event of changes in criminal law provisions. The judge not only assessed the fulfillment of the formal elements of the crime but also considered the defendant's level of involvement in the narcotics distribution network.

From a legal perspective, the judge's considerations in the decision demonstrate an effort to integrate the provisions of the Narcotics Law with the sentencing principles of the National Criminal Code. The judge considered the evidence, the defendant's role, the quantity of narcotics, and aggravating and mitigating circumstances before imposing a sentence. This approach demonstrates that the judge is not merely acting as a formal enforcer of norms but is also beginning to internalize the principles of substantive justice in criminal justice practice.

From a sociological perspective, judges also consider the defendant's background, socioeconomic conditions, and the impact of the crime on the defendant's life and society. These considerations reflect the development of a more humane and proportional sentencing paradigm. However, this practice still demonstrates various weaknesses from a perspective of justice and criminal law reform.

The first weakness is evident in the continued dominance of a repressive approach to sentencing drug dealers. Judges in many cases still tend to impose

heavy sentences as a deterrent, without making proportional distinctions based on the level of involvement of the perpetrator. As a result, perpetrators in marginal positions, such as couriers or small-time middlemen, are often sentenced to sentences nearly equivalent to those of the main perpetrators or controllers of drug networks.

The second weakness relates to the continued strength of a formalistic approach in judicial deliberations. In criminal justice practice, judicial deliberations often place greater emphasis on the fulfillment of the elements of the offense and the quantity of evidence than on examining the socio-economic background of the perpetrator and the factors underlying the defendant's involvement in drug crimes. This situation indicates that the principle of individualization of punishment in the National Criminal Code has not been fully implemented optimally.

Another weakness is the inconsistent integration of criminal law reform principles into drug law enforcement practices. Although the National Criminal Code has accommodated more humane sentencing objectives, judicial practice remains dominated by a retributive paradigm. Judges in some cases are still positioned as mere mouthpieces of the law and have not fully fulfilled their role as interpreters of substantive justice values in society.

Another problem that arises in the practice of sentencing drug dealers is the disparity in sentencing decisions between judges. This disparity is evident in the differences in sentencing for cases with relatively similar characteristics, both in terms of the amount of evidence, the role of the defendant, and the type of narcotics involved. This situation indicates that the standards of judicial consideration in drug cases are not yet fully consistent.

Disparities in sentencing can raise issues from the perspective of legal certainty and justice, as perpetrators with nearly the same level of involvement can receive significantly different sentences. This situation also indicates that sentencing guidelines in criminal justice practice have not been optimally implemented, particularly in narcotics cases, which are complex and involve multiple levels of perpetrators in illicit trafficking networks.

Another weakness relates to the existence of specific minimum sentences in the Narcotics Law, which in practice limits judges' discretion in imposing proportional sentences. High minimum sentences often lead judges to focus more on applying normative provisions than on examining the individual aspects of the defendant. Consequently, the scope for implementing a more humane and substantive justice approach is limited.

This condition shows the tension between the repressive spirit of the Narcotics Law and the direction of national criminal law reform which emphasizes individualization of punishment, proportionality, and punishment oriented

towards social rehabilitation.

In the context of criminal law reform, judges should not only be positioned as enforcers of textual norms, but also as agents of social justice capable of exploring the legal values and sense of justice inherent in society. This role is particularly crucial in drug cases, which often involve perpetrators from vulnerable social and economic groups.

An overly formalistic approach has the potential to produce decisions that are normatively legal, but not necessarily reflect substantive justice. Therefore, judges are required to balance legal certainty and humanity in the sentencing process.

The author argues that role differentiation within drug trafficking networks should be a primary focus in sentencing considerations. Offenders with significant control, power, and profits within drug networks deserve severe punishment, while offenders with limited involvement should be considered more proportionately based on the principle of individualized sentencing. This approach is crucial to avoid structural injustice in sentencing practices.

The author also believes that criminal law reform cannot be achieved solely through changes to legislation; it must also be reflected in the judges' reasoning patterns in criminal justice practice. Judges need to internalize the principles of proportionality, substantive justice, and a humanistic approach so that their decisions not only provide a deterrent effect but also reflect the goals of modern criminal justice, which focuses on community protection, offender development, and balanced justice.

Based on the author's description above, it is understandable that judges' considerations in sentencing drug dealers still face various weaknesses from the perspective of justice and criminal law reform. The dominance of a repressive approach, disparity in sentencing, formalism in considerations, and the suboptimal application of individualized sentencing indicate that the drug criminal system in Indonesia still requires more substantive reform. This reform relates not only to regulatory changes but also to a shift in the law enforcement paradigm so that sentencing can reflect a balance between legal certainty, justice, and legal benefit.

3.3. The Relevance of Criminal Policy for Narcotics Dealers from the Perspective of National Criminal Law Reform

The relevance of criminalization policies for drug dealers from the perspective of national criminal law reform demonstrates the dynamic between the long-held repressive approach and the trend toward a more modern, proportional, and humane criminal system. Law Number 35 of 2009 concerning Narcotics still positions dealers as the primary perpetrators who must be subject to severe

sanctions to create a deterrent effect and protect society from the dangers of narcotics. This policy remains relevant in the context of extraordinary drug crimes and has far-reaching implications for social and economic stability and national security. Repressive approaches, including long-term imprisonment, high fines, and even the death penalty, are still seen as crucial tools for breaking the chain of illicit drug trafficking.

Developments in Law Number 1 of 2023 concerning the National Criminal Code have brought significant reforms to the criminal justice system, emphasizing the principles of individualized punishment, proportionality, and a more humanistic approach. The relevance of sentencing policies for drug dealers in this context lies in efforts to harmonize the specific provisions of the Narcotics Law with the general principles of the National Criminal Code. Judges are required to not only apply sanctions rigidly but also consider the perpetrator's role, the level of culpability, and the defendant's socio-economic circumstances. This approach allows for differentiated sentencing, particularly for perpetrators with limited roles such as couriers, so that the decisions rendered more reflect substantive justice.

National criminal law reform also emphasizes the importance of balancing the objectives of punishment: retribution, deterrence, and rehabilitation. In the context of drug trafficking, the relevance of punishment policy is measured not only by the severity of the sanctions imposed, but also by its effectiveness in sustainably combating crime. Imposing harsh sentences without a strategy to disrupt networks and improve social systems has the potential to have no significant impact on reducing drug crime. Therefore, punishment policy must be viewed as part of a broader and more integrated criminal policy.

Overall, the relevance of criminal justice policy for drug dealers from the perspective of national criminal law reform lies in its ability to adapt to developments in modern legal values without neglecting the need for firm law enforcement. Integrating the repressive approach of the Narcotics Law with the humanist approach of the National Criminal Code is key to realizing a just, effective, and community-oriented criminal justice system that respects human rights.

Law Number 1 of 2023 concerning the National Criminal Code provides a new, more systematic basis for assessing the relevance of sentencing policies for drug dealers. The National Criminal Code emphasizes that punishment is not solely aimed at inflicting suffering, but must be directed at protecting society, preventing crime, and restoring social balance. This provision is reflected in the regulation of the objectives of sentencing, which places humanitarian aspects and substantive justice as integral parts of the criminal law system. In the context of drug dealers, this requires judges to focus not only on the severity of sanctions but also on the effectiveness of punishment in preventing ongoing illicit

trafficking.

The National Criminal Code also introduces a stricter principle of individualization of criminal penalties through sentencing guidelines. Judges are empowered to consider various factors, such as the degree of culpability, motive, the perpetrator's mental state, personal circumstances, and socioeconomic background. In relation to drug dealers, this principle is particularly relevant for distinguishing between key actors in a network and those with limited roles, such as couriers. This approach aims to avoid uniform sentencing that could potentially lead to injustice, ensuring that the decisions rendered truly reflect the proportionality between the act and the sanction.

The provisions on types of punishment in the National Criminal Code also demonstrate significant reforms. In addition to imprisonment and fines, the National Criminal Code introduces supervision and community service as alternative punishments. Although in practice, drug dealers are still likely to be subject to imprisonment due to the serious nature of their crimes, the existence of these alternative punishments demonstrates a more flexible and humane policy direction. In certain cases, particularly for perpetrators with low levels of involvement, judges have the freedom to consider more constructive and development-oriented forms of punishment.

Another important change in the National Criminal Code is the establishment of the death penalty as a special, alternative punishment, no longer the primary punishment. The death penalty can be imposed with a probationary period, giving the convict an opportunity to improve. In the context of drug crimes, this policy represents a paradigm shift from a purely repressive approach to a more moderate approach oriented toward respect for human rights, without eliminating the firmness of the law against serious crimes.

The National Criminal Code also emphasizes the importance of a balance between legal certainty, justice, and expediency in every decision. Judges act not only as enforcers of the law but also as interpreters of the legal values inherent in society. In relation to drug dealers, this means that sentencing must consider the social impact of the act, while also providing space for the perpetrator's recovery and social reintegration, where possible.

The relevance of criminal policy for drug dealers from the perspective of national criminal law reform is also evident in the increasing use of the principles of the National Criminal Code by judges in criminal justice practice. Although drug crimes are still specifically regulated by Law Number 35 of 2009 concerning Narcotics, judges in several decisions have begun to consider the criminal values in Law Number 1 of 2023 concerning the National Criminal Code as a philosophical and sociological basis for sentencing.

The application of the National Criminal Code principles is particularly evident in

considerations of individualization of punishment, proportionality, the purpose of sentencing, and the protection of human rights. Judges no longer view punishment solely as a means of retribution, but also consider the perpetrator's background, the defendant's level of involvement in the drug trafficking network, and the perpetrator's potential for reform and reintegration into society. This approach demonstrates the relevance of drug sentencing policy to the direction of national criminal law reform, which is more humane and oriented toward substantive justice.

This practice also demonstrates that the National Criminal Code is beginning to serve as a general guideline for establishing modern sentencing patterns, although provisions for narcotics crimes are still subject to specific laws. Judges in this context use the principles of the National Criminal Code as an interpretive basis to avoid overly rigid and formalistic criminal application. This situation demonstrates that criminal law reform is not only taking place at the normative level but is also beginning to influence the reasoning patterns of judges in criminal justice practice.

The application of the principles of the National Criminal Code in drug trafficking cases also demonstrates an effort to harmonize the repressive approach of the Narcotics Law with the proportional and individualistic approach of the National Criminal Code. This harmonization is crucial to ensure that punishment for drug dealers is not only oriented toward deterrence but also reflects the values of justice, expediency, and humanity, as are the goals of national criminal law reform.

The author's argument regarding the relevance of criminal justice policies for drug dealers from the perspective of national criminal law reform emphasizes the importance of consistency between the direction of legal reform and law enforcement practices in the field. The reforms introduced through Law Number 1 of 2023 have indeed ushered in a new, more humanistic and just spirit, particularly through the concept of individualized punishment and the strengthening of the objectives of punishment beyond mere repression. However, in the context of drug crimes, particularly against dealers, the author observes a tendency for the old, harsh and uniform approach to remain dominant. This situation indicates that normative transformation has not been fully accompanied by a paradigm shift at the implementation level.

The author believes that the relevance of criminal justice policy is not solely measured by the severity of the sanctions imposed, but also by the extent to which the policy addresses the root causes of drug crime. Drug dealers are not always homogeneous, but rather comprise diverse groups with varying social and economic backgrounds and levels of involvement. In social reality, many perpetrators become involved as dealers due to economic pressures, limited access to employment, or even exploitation by larger networks. The application

of criminal penalties that overly emphasize retribution has the potential to neglect the substantive justice dimension, which is the very essence of the National Criminal Code.

This line of thought leads to the view that criminal law reform should not stop at normative changes, but must be realized through the courage of judges to engage in progressive interpretation. Judges are no longer merely enforcers of the law textually, but also interpreters of the values of justice that exist within society. The author believes that the National Criminal Code provides ample space for judges to explore these values, including in determining the proportionality of punishment for drug dealers, whose role is limited.

Furthermore, the author believes that criminalization policies against drug dealers must be placed within a broader criminal policy framework. While imposing heavy sentences can provide a deterrent effect in the short term, they are not necessarily effective in the long term if not accompanied by systematic efforts to disrupt drug distribution networks. Law enforcement that focuses solely on perpetrators on the ground without addressing the intellectual actors has the potential to create a recurring cycle of crime.

The author also views criminal law reform through the National Criminal Code as a crucial opportunity to shift the focus of criminal justice from mere punishment to social rehabilitation. While this approach is more often associated with drug users, it does not mean it is irrelevant to certain categories of dealers. In certain cases, particularly for marginalized offenders, a more humane approach remains possible as long as it does not neglect the importance of protecting society. This approach can actually be instrumental in breaking the chain of crime in a more sustainable manner.

Ultimately, the author concludes that the relevance of criminalization policies for drug dealers from the perspective of national criminal law reform lies in efforts to achieve a balance between strict law enforcement and substantive justice. A repressive approach remains necessary to protect the public from the dangers of narcotics, but its implementation must be accompanied by the principles of individualized punishment, proportionality, and a humanitarian orientation, as stipulated in Law Number 1 of 2023 concerning the National Criminal Code.

4. Conclusion

1. Criminal Provisions for Narcotics Dealers in Positive Criminal Law in Indonesia: The criminalization of narcotics dealers under Indonesian positive criminal law demonstrates a comprehensive system through the *lex specialis* provisions in Law Number 35 of 2009 concerning Narcotics, supported by general provisions in Law Number 1 of 2023 concerning the National Criminal Code. This system emphasizes a repressive approach with severe and layered sanctions, ranging from imprisonment, large fines, to the death penalty in certain cases.

Differentiation of sanctions is based on the type of narcotics, the amount of evidence, and the perpetrator's role in the network, indicating that dealers are positioned as perpetrators with a high degree of culpability. In practice, the principle of *lex specialis derogat legi generali* makes the Narcotics Law the primary basis, while the National Criminal Code serves as a complement, providing guidelines for sentencing to be more proportional, just, and pay attention to the principle of individualization of punishment. These repressive regulations are considered ineffective in suppressing drug trafficking, necessitating a balance between legal firmness and a more humane approach. The National Criminal Code provides a new direction through the principles of proportionality, individualization of punishment, and the introduction of alternative punishments that provide room for improvement for perpetrators. Integrating repressive and corrective approaches is crucial to ensure the penal system is not solely focused on punishment but also achieves substantive justice, reduces disparities in sentencing, and increases the effectiveness of drug crime prevention efforts on a sustainable basis.

2. Judges' Considerations in Sentencing Narcotics Dealers and Their Weaknesses from the Perspective of Justice and Criminal Law Reform: The criminalization policy for drug dealers, from the perspective of national criminal law reform, demonstrates a shift from a repressive approach to a more proportional and humane criminal system. Law Number 35 of 2009 concerning Narcotics still positions dealers as the primary perpetrators who must be subject to severe sanctions to provide a deterrent effect and protect the public from the dangers of narcotics. The reform through Law Number 1 of 2023 concerning the National Criminal Code introduces the principle of individualized punishment, so that judges are not only oriented towards the severity of the sanction, but also consider the level of culpability, the perpetrator's role, motives, and the defendant's socio-economic conditions. This approach opens up space for fairer and more proportional sentencing, especially for perpetrators with limited involvement, such as couriers. The relevance of criminal justice policy for drug dealers also lies in balancing strict law enforcement with humanitarian values and substantive justice. The National Criminal Code emphasizes that the purpose of criminal justice is not only retribution, but also community protection, crime prevention, rehabilitation, and social recovery.

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