

Analysis of Judicial Decisions Imposing Sentences Below The Minimum Penalty Threshold in Article 112 Paragraph (1) of The Narcotics Law

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ABSTRACT

This research analyzes the Decision of the Denpasar District Court Number 249/Pid.sus/2024/PN Dps, wherein the court imposed a sentence below the special minimum threshold as stipulated in Article 112 paragraph (1) of the Narcotics Law. Employing a normative juridical research methodology with a statutory approach, this study examines the legal considerations utilized by judges in rendering decisions below the minimum threshold and identifies the implications of such decisions on law enforcement and narcotics policy in Indonesia. The findings demonstrate that the judicial panel based its decision on Supreme Court Circular Letter (SEMA) Number 3 of 2015, considering that the defendant was proven to be a user and possessed a relatively small quantity of narcotics. This phenomenon of sentencing below the minimum threshold generates legal complexities in the form of legal uncertainty due to its contravention of the legality principle, the diminishment of deterrent effects, and the creation of inconsistency in judicial decisions that potentially undermines public confidence in the judiciary. This research recommends harmonization of legislation pertaining to narcotics offenses, development of more proportionate sentencing policies with a public health approach, and the necessity for a monitoring system regarding judicial decisions that deviate from special minimum provisions.

Keywords: *Imposition of Imprisonment, Statutory Minimum Threshold, Narcotics Criminal Offense, Judicial Considerations, Article 112 Paragraph (1).*

1. INTRODUCTION

Narcotics have become a serious problem in various parts of the world, including Indonesia. Its distribution and abuse are increasing and worrying because many people are trapped and losing their lives. Narcotics crimes are categorized as extraordinary crimes. This is because the effects of the losses arising from this crime are very large and threaten everyone, both children, young people, and the elderly, and can even damage a generation and the future of a country. Narcotics abuse can have an impact on physical and mental damage, and affect the social life of society because this crime is a form of violation of the law and violation of social norms [1]–[3].

Criminal acts involving narcotics abuse constitute a special category of crime regulated outside the Indonesian Penal Code (KUHP). Specifically, such acts are governed by Law of the Republic of Indonesia Number 35 of 2009 on Narcotics (hereinafter referred to as the Narcotics Law). According to Article 1 point 1 of the Narcotics Law, narcotics are defined as “substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, that can cause a decrease or alteration in consciousness, loss of sensation, reduce or eliminate pain, and may lead to dependence, which are classified into specific groups.” The law also defines narcotics abuse as the unlawful and unauthorized use of narcotics, meaning usage that is not intended for medical services or scientific development [4], [5].

Narcotics are categorized into three groups: Group I, Group II, and Group III, as stipulated in the Narcotics Law. Each group has specific uses and benefits, but at the same time, these

substances can pose serious dangers when misused. The abuse of narcotic substances has undoubtedly harmful effects on users; therefore, certain narcotics use is considered deviant behavior that endangers and harms the individual, their family, society, and the state. Consequently, such misuse must be prohibited by legislation. Indonesia has established legal regulations concerning narcotics through a series of laws. The first law addressing narcotics abuse was Law Number 8 of 1976, followed by Law Number 22 of 1997, and most recently, Law Number 35 of 2009. Although the Narcotics Law imposes strict penalties for narcotics-related offenses, narcotics abuse in Indonesia continues to flourish, reaching alarming levels [4], [6], [7].

In Indonesia, the application of law in narcotics cases has drawn the attention of criminal law experts, particularly regarding judges' decisions to impose penalties below the statutory minimum prescribed by the Narcotics Law. Such decisions often provoke controversy due to a conflict between judges' rational considerations for the defendant's interest and the public's sense of justice. It is common in several Indonesian laws to find provisions stipulating specific minimum sentences that may be imposed on defendants. This means that the law restrictively regulates the minimum sentence a judge can impose. In practice, this issue frequently arises in cases related to Article 112 paragraph (1) of the Narcotics Law.

Judges, as one of the pillars of law enforcement and justice, play a crucial role in court. One of their responsibilities is to ensure that every verdict considers elements of justice, legal certainty, and legal benefit. In accordance with Article 1 paragraph (1) of Law Number 48 of 2009 on Judicial Power (hereinafter referred to as the Judicial Power Law), judges are required to uphold law and justice based on the values of Pancasila. This process includes understanding and applying legal principles that align with Pancasila values, so that decisions not only meet legal formalities but also reflect justice in line with the nation's moral and ethical values. Thus, law enforcement by judges is expected to yield fair outcomes in accordance with the justice expected by society [8]–[11].

However, it is found that judges often deviate from the statutory minimum prison sentence when delivering verdicts in narcotics cases. Various judicial rulings below the minimum sentence provoke differing opinions, often sparking controversy due to the clash between judicial rationality in favor of the defendant and society's sense of justice. One such case is the verdict of the Denpasar District Court Number 249/Pid.Sus/2024/PN Dps, which did not comply with the statutory minimum sentence as set out in the Narcotics Law. The issuance of rulings below the minimum sentencing threshold in narcotics cases has become an intriguing subject of study. Therefore, it is crucial to examine to what extent the panel of judges at the court adheres to existing regulations based on their considerations to ensure legal certainty and fulfill the objectives of law enforcement in combating narcotics crimes.

Studies on sentencing below the minimum threshold for narcotics offenses have been conducted by several authors. Two such studies include: First, the article by Rezky Syahputra, Mohammad Ekaputra, and Marlina titled "Analysis of Judges' Rulings Imposing Sentences Below the Minimum Threat of Criminal Sanctions in Article 112 Paragraph (1) of the Narcotics Law (Study of Supreme Court Verdict Number 2308 K / Pid.Sus / 2018)" published in *Locus Journal of Academic Literature Review*, Vol. 3, No. 4, 2024. This article focuses on the applicability of Supreme Court Circular (SEMA) Number 03 of 2015 as the basis for imposing sentences below the specific minimum and explores why SEMA No. 03/2015 is seen as able to override statutory provisions in the Narcotics Law. Second, an article by Yoga Pratama Adi, Sanyoto, and Dessi Perdani Yuris Puspita Sari titled "Sentencing Below the Statutory Minimum for Perpetrators of Narcotics Crimes (Study of Verdict

Number: 220/Pid.Sus/2017/PN Pwt)” in Soedirman Law Review Journal, Vol. 2, No. 3, 2020, which focuses more on the judge’s reasoning in the verdict and its connection to existing legal theories. In contrast to those two articles, this paper emphasizes the analysis of the judicial considerations used in delivering a sentence below the specific minimum in the Denpasar District Court Verdict Number 249/Pid.Sus/2024/PN Dps, and examines the implications of such sentencing for law enforcement and narcotics policy in Indonesia [12].

2. METHODS

The type of research used in the preparation of this article is normative juridical research, which is based on laws or applicable legal regulations, the opinions of legal experts, books, and journals related to legal studies. The approach used by the author in this thesis research is the statute approach, referring to Supreme Court Circular (SEMA) No. 1 of 2017 concerning the Implementation of the Formulation of the Results of the 2017 Supreme Court Chamber Plenary Meeting as Guidelines for Judicial Duties. This approach aims to provide an explanation of whether imposing a sanction below the special minimum threshold contradicts the law or not [13], [14].

This research uses a literature approach, by studying books, legislation, and other documents related to the legal issues examined in this thesis. The object of this normative juridical research is to determine the basis of judicial consideration in issuing a verdict below the special minimum sanction in Decision Number 249/Pid.sus/2024/PN Dps, and to understand the legal consequences of such a verdict.

The data used in this research is secondary data, which is obtained from literature studies consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data obtained is then analyzed using qualitative descriptive analysis, which means analyzing the data without using numerical values, but rather describing the legal facts found in Decision Number 249/Pid.sus/2024/PN Dps.

3. RESULTS AND DISCUSSION

3.1 Legal Considerations Underlying the Judge in Imposing a Sentence Below the Minimum Limit in Decision Number 249/Pid.sus/2024/PN Dps

The Republic of Indonesia Law Number 35 of 2009 on Narcotics regulates special minimum sentencing threats. For instance, Article 112 Paragraph (1) of the Narcotics Law states “Any person who without rights or against the law possesses, stores, controls, or provides Category I non-plant narcotics shall be punished with imprisonment of at least 4 (four) years and at most 12 (twelve) years and a fine of at least IDR 800,000,000 (eight hundred million rupiahs) and at most IDR 8,000,000,000 (eight billion rupiahs).” In relation to the sentencing by judges against perpetrators of narcotics crimes, a judge must render a verdict within the limits prescribed by the Narcotics Law. As the law stipulates both minimum and maximum criminal threats, these provisions serve as legal standards or requirements for judges in delivering verdicts. Therefore, ideally, judges should use these provisions as guidelines in sentencing narcotics-related criminal cases. However, such adherence is not reflected in the Denpasar District Court’s decision in case Number 249/Pid.Sus/2024/PN Dps, where the judge imposed a sentence outside the minimum and maximum boundaries stipulated by the Narcotics Law. In this decision, the judge sentenced the defendant below the minimum threshold as stated in the article charged by the Public Prosecutor.

In Decision No. 249/Pid.Sus/2024/PN Dps, it is stated that the defendant, Adrio Rachmanda Octavrianto (24 years old), was legally and convincingly proven guilty of committing a narcotics crime for possessing Category I non-plant narcotics in the form of synthetic tobacco (Tembakau Sinte) with a net weight of 6.18 grams. The Public Prosecutor filed an alternative indictment based on Article 114 Paragraph (1) or Article 112 Paragraph (1) of the Narcotics Law. Based on the legal facts revealed during the trial, the panel of judges deemed that the defendant’s actions violated

Article 112 Paragraph (1) of the Narcotics Law. For this offense, the judge sentenced the defendant to 3 (three) years of imprisonment and a fine of IDR 500,000,000 (five hundred million rupiahs), with a provision that if the fine is not paid, it would be replaced by 4 (four) months of imprisonment. This ruling clearly indicates that the panel of judges imposed a sentence below the statutory minimum of 4 (four) years, as prescribed in Law No. 35 of 2009 on Narcotics. However, the decision does not explain the legal grounds for the judge sentencing below the minimum as charged by the Public Prosecutor.

In the judge's consideration, it was revealed that the defendant's Legal Counsel submitted several defense arguments specifically referring to Article 127 in conjunction with Article 103 of the Narcotics Law. The main argument was a request for the panel of judges to declare the defendant guilty as a narcotics user, not as a perpetrator of a more severe criminal offense. Furthermore, the defendant's counsel requested a sentence of medical and social rehabilitation, in line with the spirit of the law to recover narcotics users. However, the panel of judges firmly stated that the defense arguments submitted by the defendant's counsel lacked sufficient legal basis and were therefore entirely rejected.

Nevertheless, the panel of judges did not completely ignore the context of narcotics abuse in this case. Based on the legal facts revealed during the trial, the judges believed that the imposed prison sentence although deviating from the statutory special minimum punishment applicable to other narcotics-related offenses was still fair, appropriate, and reasonable. This judicial consideration was based on the Supreme Court Circular Letter (SEMA). SEMA Number 3 of 2015, under Section A, Criminal Sentencing Formulation No. 1, stipulates that the results of the 2015 Supreme Court Chamber Plenary Meeting are to be used as guidelines for the judiciary. The circular states that in narcotics cases under Articles 111 and 112 of the Narcotics Law, judges may impose sentences below the statutory minimum threat stipulated in the Narcotics Law. Thus, the existence of SEMA No. 3 of 2015 serves as a legal basis for judges to deviate from the law by issuing narcotics case rulings below the statutory sentencing guidelines.

Judges must examine and decide cases based on the indictment by the Public Prosecutor (as per Articles 182 Paragraphs 3 and 4 of the Criminal Procedure Code). However, if the defendant is proven to be a user and the amount is relatively small, the judge may decide the case according to the indictment but may deviate from the special minimum sentencing provision by providing sufficient legal reasoning. In the analyzed case, the Public Prosecutor filed alternative charges under Article 114 Paragraph (1) in conjunction with Article 112 Paragraph (1) of the Narcotics Law. However, based on the legal facts revealed in court, the defense argument presented by the defendant's counsel included the testimony of a de charge witness, namely Dr. Anak Agung Gede Hartawan, who explained that he had examined the defendant multiple times through interviews and urine tests. The witness concluded that the defendant was a narcotics abuser, specifically of synthetic tobacco (tembakau sinte), and experienced symptoms such as restlessness and insomnia when not using it.

Due to this fact, the Public Prosecutor did not include Article 127 in the indictment. However, based on these facts, the panel of judges considered that the defendant was proven to be a user and the quantity was relatively small. Thus, the judges ruled according to the indictment but exercised their authority to deviate from the special minimum sentencing by providing sufficient justification. Although the urine test conducted at the time of arrest did not detect any narcotic substances, the legal facts revealed during the trial did not provide sufficient legal evidence that the defendant's actions were part of a transactional narcotics distribution as a dealer, seller, or for profit-making purposes, and there was no sufficient legal proof of the defendant's involvement in any narcotics distribution network. Therefore, the panel of judges held that based on these legal facts, imposing a sentence below the special minimum sentence in Decision No. 249/Pid.Sus/2024/PN Dps was still fair, appropriate, and reasonable in the context of the criminal act committed by the defendant.

3.2 Implications of Judges' Decisions Imposing Sentences Below the Minimum Limit on Law Enforcement and Drug Policy in Indonesia

The enforcement of minimum sentencing serves as a fundamental foundation in efforts to create a deterrent effect for every party involved in narcotics crimes. By setting a punishment duration that cannot be reduced below a certain threshold, perpetrators are expected to be more cautious before committing unlawful acts. Furthermore, the application of minimum sentences also functions as a means to ensure legal certainty. Legal certainty is a crucial pillar in the criminal justice system—the clearer and firmer the applicable rules, the less room there is for any party to manipulate the judicial process. In the context of narcotics, where legal resistance and sentence negotiations frequently occur, minimum sentencing provisions close the gaps for defense arguments often based on loose interpretations of facts or evidence. Thus, judges are bound to apply the predetermined sentencing range, making verdicts more consistent across cases and less influenced by subjective factors.

Paragraph 2 The Narcotics Law has established minimum sentencing thresholds for each violation involving the distribution and possession of illegal substances, with the hope of creating a strong deterrent effect. However, in judicial practice, there are occasionally verdicts that impose sentences below the special minimum threshold. This phenomenon raises concern and debate—on one hand, the firmness of the law appears to be eroded, while on the other, judicial discretion is deemed necessary to align the verdict with the defendant's specific circumstances and trial facts. One example is Decision No. 249/Pid.Sus/2024/Pn.Dps, where the judge opted to impose a sentence below the special minimum as stipulated in the Narcotics Law.

The phenomenon of verdicts falling below the special minimum threshold in narcotics cases fundamentally contradicts the principle of legality (*nulla poena sine lege*), which asserts that there is no punishment without clear legal provisions. This principle requires that all criminal sanctions must be based on laws established beforehand, meaning that judges may not impose punishments not explicitly regulated. When a verdict falls below the minimum threshold, the judge effectively reduces or eliminates a provision that should have been applied, thereby violating the principle of no punishment without law, which underpins the legitimacy of the criminal justice system. Moreover, this deviation also undermines the very purpose of the Narcotics Law, namely to create a strong deterrent effect and legal certainty for all layers of society. The design of special minimum sentences in the Narcotics Law was formulated to close off interpretive gaps and deliver a firm message that narcotics violations are intolerable. However, if judges hand down sentences below that threshold, the moral and deterrent messages intended become weakened—defendants perceive there is still room for leniency beyond formal provisions, reducing both preventive motivation and the decline of narcotics crime rates.

Noncompliance with minimum sentencing also impacts legal certainty. It becomes difficult to maintain consistency in court decisions because there is no absolute standard being enforced. As a result, similar cases can lead to widely varying verdicts depending on the subjectivity of each panel of judges. In the long term, such disparities and inconsistencies visibly erode public trust in the judiciary. The public no longer believes that each narcotics offender will receive an equivalent sentence—there arises a perception of unequal treatment between defendants. When confidence in the fair enforcement of law fades, the deterrent effect also loses meaning, as potential offenders feel there is a considerable chance of avoiding minimum sanctions. Consequently, narcotics sentencing policy, originally intended to protect the public and reduce crime rates, may instead undermine the very foundations of law enforcement. Inconsistencies in verdicts open the door for increasingly rampant legal violations, while eroding public trust hampers cooperation between communities and law enforcement officers. Therefore, ensuring consistent application of special minimum sentencing is crucial so that the principle of legality, legislative objectives, and public trust in the justice system can be achieved optimally.

Lenient verdicts in narcotics cases directly contradict government policies affirming a firm and comprehensive commitment to combating narcotics crimes. Since the enactment of the Narcotics

Law, the government has established special minimum sentences as a strict law enforcement instrument, with the hope of curbing illegal trafficking and narcotics abuse. Lenient punishment inadvertently opens opportunities for perpetrators to reoffend, as the sanctions are not seen as sufficiently fear-inducing. When a defendant sees that the sentence is merely two or three years—despite the law stipulating a minimum of four years—the motivation for deterrence fades. As a result, recidivism becomes difficult to suppress, with former inmates often returning to old trafficking networks or falling into equally dangerous new environments.

The social impact of lenient sentences also extends to increased substance abuse in society. Abusers and potential offenders interpret the lenient punishment trend as an entry point for the continuation of illegal narcotics practices. News of light sentences spreads easily, both through media and community networks, potentially undermining prevention efforts developed through anti-narcotics campaigns and rehabilitation programs. Instead of decreasing, drug abuse conditions tend to stagnate or even worsen. Furthermore, public perception of narcotics law enforcement becomes increasingly negative. Society perceives a disconnect between the slogan of the war on drugs and the reality of seemingly soft verdicts. Trust that authorities and judicial institutions can enforce harsh punishments as a form of protection for citizens and future generations diminishes. This negligence risks reducing public support for narcotics eradication programs, even though public involvement is actually the key to success.

Judges possess discretion in delivering verdicts—a power mandated by the justice system to ensure that each case is decided based on factual considerations in court. This discretion includes assessing evidence, weighing aggravating or mitigating circumstances, and formulating sentences deemed proportional to the defendant's level of guilt. However, such freedom is not absolute or without limits. It must always be exercised within the framework of applicable laws so that the resulting verdicts are not only fair to the defendant but also consistent with the principle of legality and legislative objectives.

Since narcotics crimes are categorized as extraordinary crimes, these boundaries become all the more crucial. Narcotics offenses not only harm individual victims but also cause widespread damage to public health, national security, and social order. Therefore, lawmakers and the government have established stricter rules—such as special minimum sentences—to underscore the message that such crimes must not be taken lightly. Judicial rulings that deviate significantly from minimum requirements weaken the legal firmness being asserted and diminish the deterrent effect intended as a preventive tool.

Nonetheless, judicial discretion remains valid and important for achieving substantive justice. Discretion allows judges to consider specific circumstances of the defendant—such as age, health conditions, or contributions to law enforcement—which may not be fully covered by formal rules. However, the use of such discretion must be proportional—meaning, it should only be applied as long as it still respects the minimum limits set by law. In other words, discretion must not be used as a way to undermine legal provisions, but rather as a tool to balance individual justice with public protection interests.

From the perspective of legal certainty, the author argues that Supreme Court Circular (SEMA) No. 3 of 2015 suggests that a panel of judges may issue a sentence below the minimum statutory requirement, based on that Circular. The issuance of SEMA No. 3 of 2015 can be said to deviate from the minimum sentencing rules in Law No. 35 of 2009 on Narcotics. This also contravenes the legal principle known as *Lex superior derogat legi inferiori* where higher legal norms override lower ones. Van Kant also stated that the purpose of law is to protect the interests of every individual so that such interests are not violated. Based on Van Kant's opinion, Utrecht further argued that the law serves to ensure legal certainty (*rechtzekerheid*) in human interactions. For him, the law provides assurance between one party and another. It is thus evident that the law's function is to guarantee legal certainty in society and to safeguard against individuals taking justice into their own hands (*eigenrichting is verboden*), because every case must be resolved through the judicial process based on prevailing laws.

On the other hand, this also causes confusion among law enforcement officers, including public prosecutors, legal counsels, and judges themselves. It becomes unclear which regulation should be followed as a guideline in resolving narcotics cases, because the Supreme Court Circular (SEMA) No. 3 of 2015 on the Implementation of the 2015 Supreme Court Chamber Plenary Meeting Results as Guidelines for Judicial Duties only applies internally to one group of law enforcers judges while other law enforcement officials such as Public Prosecutors and Legal Counsel are not bound by the contents of this circular letter. This discrepancy creates confusion in handling narcotics cases, especially when judges base their decisions on SEMA No. 3 of 2015 while prosecutors and legal counsel refer to the provisions stipulated in Law No. 35 of 2009 concerning Narcotics. Such divergence in legal interpretation can disrupt coordination between law enforcement institutions and weaken the uniformity of legal outcomes.

CONCLUSION

Based on the analysis of the Denpasar District Court Decision Number 249/Pid.sus/2024/PN Dps, it can be concluded that the imposition of a sentence below the minimum penalty limit under Article 112 paragraph (1) of the Narcotics Law by the panel of judges is based on Supreme Court Circular Letter (SEMA) Number 3 of 2015, which allows deviations from the specific minimum provisions provided the defendant is proven to be a user and the amount involved is relatively small. This phenomenon has caused serious implications for law enforcement and narcotics policy in Indonesia, such as the creation of legal uncertainty due to conflicts with the principle of legality, weakening of the deterrent effect, and inconsistency in court decisions that potentially reduce public trust in judicial institutions and indirectly contribute to an increase in narcotics abuse.

There is a need for harmonization of legislation related to narcotics criminal acts, particularly between the Narcotics Law and SEMA Number 3 of 2015, through the revision of the Narcotics Law by including specific provisions on deviations from the minimum sentencing limits with clear conditions and requirements, as well as the issuance of more comprehensive guidelines from the Supreme Court regarding the criteria that can be used as a basis for judges to deviate from the specific minimum penalty provisions. In addition, it is necessary to develop a more proportional sentencing policy with a public health approach in handling narcotics abuse cases, prioritizing rehabilitation for pure users while still applying strict criminal sanctions for dealers, alongside establishing a supervisory system over judges' decisions that deviate from the specific minimum provisions to ensure sufficient considerations and prevent injustice in narcotics law enforcement.

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