

# The Special Minimum Criminal Ideas in Narcotics

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## Abstract.

*The purpose of this research is to understand the essence of the idea of the need for a special minimum punishment in Act No. 35 of 2009 concerning Narcotics. The approach method used in this paper is normative juridical. This writing specification is descriptive analytical. Criminal sanctions in Act No. 35 of 2009 concerning Narcotics, it is known that there are minimum and maximum sanctions which are in Article 111 to Article 148 of Act No. 35 of 2009 concerning Narcotics. Then the weighting of penalties in Act No. 35 of 2009 can also be seen from its nature, which is cumulative, meaning that if a person is proven to have committed a narcotic crime, he will be subject to imprisonment and a fine. With the existence of a special minimum criminal system, as contained in Act No. 35 of 2009 concerning Narcotics, it is expected that perpetrators of criminal acts of drug abuse can be subject to severe penalties, This is because every year the number of perpetrators of narcotics crimes is increasing/increasing, where one of the causes cannot be separated from the lightness of the decisions handed down by judges so that the imposition of crimes does not create a deterrent effect for the perpetrators. Even though it is very clear that narcotics have a very bad impact on their users, even narcotics crimes are very dangerous for the interests of the nation and state.*

*Keywords: Criminal; Narcotics; Special.*

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## 1. Introduction

Since it was proclaimed on August 17, 1945, Indonesia has been born as a state of law. This is confirmed in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which has affirmed that "the State of Indonesia is a state of law". This means that all actions involving the life of the state must be based on and have consequences in accordance with the laws in force in the Republic of Indonesia.<sup>1</sup>The Republic of Indonesia, which is based on Pancasila and the 1945 Constitution, regulates every behavior of its citizens, inseparable from all regulations originating from the law. The rule of law requires that the law must always be enforced, respected and obeyed by anyone without any exceptions. It aims to create security, order, prosperity in the life of society and the state.<sup>2</sup>

In an effort to carry out development in all fields, especially in the field of law that is currently underway in the State of Indonesia, all people are made aware of

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<sup>1</sup>Anirut Chuasanga and Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia Dan Thailand*, Jurnal Daulat Hukum, 2 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218/2924>

<sup>2</sup>Sri Praptini, Sri Kusriyah, and Aryani Witasari. (2019). *Constitution and Constitutionalism of Indonesia*, Jurnal Daulat Hukum, 2 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4149/2897>

Wijayanti Puspita. (2019). *Penjatuhan Pidana Penjara Atas Tindak Pidana Narkotika Oleh Hakim Di Bawah Ketentuan Minimum Ditinjau Dari Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika*, Jurnal Hukum Magnum Opus, II (2)

the important role of law as a means of protection for managing the life of the community, nation and state in various fields of life. The role of law as protection is reflected through the function of law as a means of social control (social control), social change (social engineering), and law as an integrative means.<sup>3</sup>

Law in the context of the state is generally a basic reference and guide in state life. The law also actually provides security (order), welfare and happiness for the community within the scope of the rule of law.<sup>4</sup>

Current legal developments have also accommodated the implementation of a special minimum criminal system (outside the Criminal Code), for example in the provisions of Act No. 35 of 2009 concerning Narcotics. The existence of this special minimum criminal system seems to limit the freedom of judges in making decisions, even though there are no rules/guidelines regarding this special minimum criminal system. whereas in fact, this criminal determination is specifically part of the jurisdiction of the Judge, even in this area no one can influence the will of the Judge in determining how much punishment is appropriate for the Defendant, this is also included in the area of conscience of every Judge as the most important territory. abstract that is very likely the same between one Judge with another.<sup>5</sup>

Drug crimes include *extraordinary crime* or extraordinary crimes that require extraordinary efforts to eradicate them. Narcotics crimes that have been transnational in nature, carried out with a continuously evolving *modus operandi*, have caused widespread victims that have damaged the life of the nation and state. Narcotics abusers who are mostly the nation's young generation (among the productive age) have reached a very worrying stage, so it is not surprising that in 2015 Indonesia was declared a drug emergency.<sup>6</sup>

The minimum provisions for special crimes that have been regulated in the law are the minimum limits for judges in making decisions so that judges cannot impose sentences on defendants under these minimum provisions. Vice versa, the judge also cannot make a decision that exceeds the maximum provisions that have been regulated in the law. The regulation regarding the minimum provisions aims to provide a deterrent effect to the perpetrators of criminal acts, while the maximum provisions aim to avoid and prevent criminal acts arbitrary actions of judges in making decisions.

The purpose of the author's research is to examine and analyze the nature of the idea of the need for a special minimum crime in Act No. 35 of 2009 concerning Narcotics.

## 2. Research Methods

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<sup>3</sup>Satjipto Rahardjo. (1983). *Hukum dan Perubahan Sosial*, Bandung: Alumni, p. 127-146.

<sup>4</sup>Satjipto Rahardjo. (2008). *Negara Hukum yang Membahagiakan Rakyatnya*, Genta Publishing, Yogyakarta, p. 94

<sup>5</sup>Supandriyo. (2019). *Asas Kebebasan Hakim dalam Penjatuhan Pidana: Kajian komprehensif terhadap tindak pidana dengan ancaman minimum khusus*, Arti Bumi Intaran, Yogyakarta, p. 18

<sup>6</sup>Dhian Artwitadibrata, and Akhmad Khisni. (2020). *The Concept of Criminal Law for Personnel of Narcotics Abuse*, Jurnal Daulat Hukum, 3 (4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/13603/5167>

To conduct an assessment in this writing, the author uses a normative juridical method, with an emphasis on literature study.<sup>7</sup>The specifications in this study are descriptive analysis. Secondary research material that comes from the legislation relating to the writing done. The data collection used in this paper is a document study which is a data collection tool that is carried out through written data using "content analysis".

### 3. Results and Discussion

#### 3.1. The Nature of the Idea of the Need for a Special Minimum Crime in Act No. 35 of 2009 concerning Narcotics

As a means of preventing and tackling crime, the criminal justice system is expected to work properly or the criminal justice system is expected to work effectively and efficiently. One of the support sub-systems that has a very important role in the implementation of the criminal justice system is the court because it contains judges who are authorized by law to try.<sup>8</sup> Judges have very broad freedom to choose the type of crime (strafsort) according to their will, because in principle Indonesian positive criminal law uses an alternative system in the inclusion of criminal sanctions.<sup>9</sup>

Narcotics crime, which tends to continue to increase and cause very wide victims, especially for the young generation of the nation's hopes and for the imposition of a deterrent effect on perpetrators of narcotics abuse, gave birth to the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The existence of this Law itself has revoked the existence of Act No. 22 of 1997 and the attachments regarding the types of psychotropic class I and group II in Act No. 5 of 1997 concerning Psychotropics.

Emphasis is placed on the deterrent effect on perpetrators of abuse and illicit trafficking of narcotics and narcotics precursors, this Law regulates the existence of a weighting of criminal sanctions, both in the form of a special minimum sentence, imprisonment of 20 (twenty years), life imprisonment and criminal imprisonment. dead. The criminal weighting is carried out based on the class, type, size and amount of Narcotics. Articles regarding the provisions on criminal threats in this Law are contained in Articles 111 to 148.

Criminal sanctions in Act No. 35 of 2009 concerning Narcotics, it is known that there are minimum and maximum sanctions which are in Article 111 to Article 148 of Act No. 35 of 2009 concerning Narcotics. Then the weighting of penalties in Act No. 35 of 2009 can also be seen from its nature, which is cumulative, meaning that if a person is proven to have committed a narcotic crime, he will be subject to imprisonment and a fine.<sup>10</sup>

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<sup>7</sup>Rony Hanitijo Soemitro. (1990), *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, p.34

<sup>8</sup>Article 1 Number 8 of the Criminal Procedure Code (KUHP)

<sup>9</sup>Muladi. (1995). *Hal-hal Yang Harus Dipertimbangkan Hakim Dalam Menjatuhkan Pidana Dalam Rangka Mencari Keadilan Dalam Kapita Selekta Sistem Peradilan Pidana*, Badan, Semarang: Universitas Diponegoro, p. 107

<sup>10</sup>Wijayanti Puspita. Op.cit. p. 64.

With the existence of a special minimum criminal system, as contained in Act No. 35 of 2009 concerning Narcotics, it is expected that perpetrators of criminal acts of drug abuse can be subject to severe penalties, this is because every year the number of perpetrators of narcotics crimes is increasing/increasing, where one of the causes cannot be separated from the lightness of the decision handed down by the judge so that the imposition of a crime does not create a deterrent effect for the perpetrators. Even though it is very clear that narcotics have a very bad impact on their users, even narcotics crimes are very dangerous for the interests of the nation and state.

Barda Nawawi in his opinion regarding the special minimum punishment, stated that: "Special minimum penalties are an exception, namely for certain offenses that are considered very harmful, dangerous or disturbing to the community and offenses qualified by their consequences (Erfolsqualifizierte delikte) as a quantitative measure that can be used as a benchmark that offenses threatened with criminal sanctions imprisonment for more than 7 (seven) years which can be given a special minimum threat, because those offenses are classified as very severe".<sup>11</sup>

The minimum criminal provisions that apply in Indonesia in the Criminal Code are regulated in Article 12 paragraph (2) for imprisonment for one day while for imprisonment in Article 18 paragraph (1) and the duration is one day as well, this applies in general. However, special minimum punishment is not regulated in the Criminal Code, but Article 103 of the Criminal Code states that laws outside the Criminal Code can regulate special matters (special rules).

The standardization of the specific minimum threats varies and is not patterned depending on the type of criminal act so that in the rules and guidelines for its implementation there is no standard that will be used as a reference for carrying it out.<sup>12</sup>

The general minimum and maximum pattern regulated in the Criminal Code states that for imprisonment the length of time a person is imprisoned is one day and a maximum of 15 years or 20 years for a weighting crime, while in criminal acts outside the Criminal Code the specific minimum criminal pattern for imprisonment varies / there is no pattern. The standard and maximum threats in particular also vary depending on the offense / crime committed.<sup>13</sup>

With the existence of a special minimum criminal system, as contained in the Narcotics Law, it is expected that perpetrators of narcotics crimes can be subject to severe penalties, this is because from year to year the number of narcotics criminals or narcotics abusers is increasing, which one of the causes cannot be separated from the lightness of the decision handed down by the judge, or it can be said that the factor of criminal imposition does not have an impact on the perpetrators. Even though it is clear that narcotics have a bad impact on their users, even narcotics crimes are very dangerous for the interests of the nation and state.

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<sup>11</sup>Barda Nawawi Arief. (2002). *Bunga Rampai Kebijakan hukum Pidana*, Citra Aditya Bakti.Bandung, p.128.

<sup>12</sup>Anggi Prayurisman. (2011). *Penerapan Sanksi Pidana Di Bawah Ancaman Miimum Khusus Dalam Perkara Tindak Pidana Narkotika*, Tesis Pascasarjana, Fakultas Hukum Universitas Andalas Padang, p.414.

<sup>13</sup>Bambang Waluyo. (2004). *Pidana dan Pemidanaan*, Sinar Grafika, Jakarta, p.33

Often the judge in passing a verdict on a criminal case is not proportional to the crime or the consequences of the crime itself. This, if viewed from the rules of criminal law, is not contradictory, because the previous criminal laws and regulations have not set specific minimum system rules in imposing the amount of the length of the sentence and the severity of the sentence. This is because it uses a system of special maximums and general maximums, as well as with the general system of minimums, without setting a specific minimum system. This often leads to injustice in the imposition of sanctions.

The criminal system regulated in the narcotics law, especially with regard to the formulation of a specific minimum crime, appears as follows:

- There is no uniform quantitative measure of when or at the maximum punishment (imprisonment, confinement and fines) how much the minimum can be started. For imprisonment, some use years (from 3 years to 15 years) and some use months. Likewise for imprisonment, some use the year and some use the month. For fines, some use the size of millions of rupiah, and some use the size of billions of rupiah;
- There is no uniformity of ranges for minimum prison sentences in particular. Likewise with the minimum imprisonment in particular and a special minimum fine. Furthermore, from the lowest range, both for imprisonment, confinement, and fines, using qualitative measures, it turns out that they do not (all) indicate that these offenses are offenses that are very dangerous/disturbing to the community, and/or offenses which are qualified or aggravated as a result.
- There is no comparison or equality ratio, between the special maximum and the minimum in particular, both for imprisonment, confinement and fines.

The various formulations of *strafmaat* or the severity of punishment in the law that includes the specific minimum punishment as mentioned above, stems from the absence of a "punishment pattern" that can serve as a guideline for legislative policy holders.<sup>14</sup> The result that can be imagined is the inconsistency of specific minimum criminal formulations in several laws that are the product of the legislation policy, and this in turn has the potential to affect the effectiveness of law enforcement at the criminal application policy level.

The criminal system for narcotics crimes stipulates special minimum and maximum threats, both in terms of imprisonment and fines. However, certain articles also stipulate the maximum penalty as regulated in the Criminal Code (such as Articles 127, 131, 134 and 138). The specific maximum imprisonment for narcotics offenses that are threatened far exceeds the general maximum in the Criminal Code (15 years), which is up to 20 years at most. In imposing a prison sentence that exceeds the maximum limit of 15 (fifteen) years, namely 20 (twenty years) it is allowed in the Criminal Code in the case of repetition or concurrent (because it can be added one third) or certain criminal acts as an alternative to the death penalty as in Article 104 , 340, 365 paragraph 4 of the Criminal Code. In narcotics crime, the maximum maximum threat specifically for a maximum of 20 (twenty) years does not have to be repeated or concurrently, but has been determined in certain articles as in Article 114. As for the general minimum criminal

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<sup>14</sup>Anang Priyanto. (2005). *Citra Hakim Dan Penegakan Hukum Dalam Sistem Peradilan Pidana Di Indonesia*, Jurnal Civics, 2 (2), p.4



provisions in the Criminal Code is 1 (one) day. This is different from the special minimum criminal provisions in the Narcotics Law which have been determined in the article, such as a special minimum sentence of 4 (years) for Article 111 or Article 112.

In this case, examples of special minimum criminal provisions are taken in Article 111 or Article 112 of the Narcotics Law which states as follows:

Article 111

- Any person who without rights or against the law plant, maintain, possess, store, control, or provide Narcotics Category I in the form of plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine at least IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah).
- In the event that the act of planting, maintaining, possessing, storing, controlling, or providing Narcotics Category I in the form of plants as referred to in paragraph (1) weighs more than 1 (one) kilogram or exceeds 5 (five) trees, the perpetrator shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

Article 112

- Any person who without rights or against the law owns, keeps, controls, or provides Narcotics Category I is not a plant, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine of IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah);
- In the event that the act of possessing, storing, controlling, or providing Narcotics Category I is not a plant as referred to in paragraph (1) weighing more than 5 (five) grams, the perpetrator shall be sentenced to life imprisonment or a minimum imprisonment of 5 (five) years and a maximum of 5 (five) years imprisonment. a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

Whereas in the article there are specific minimum provisions as follows:

Chapter	Imprisonment and Minimum Fines	Imprisonment and Maximum Fines
111 paragraph (1)	4 years and 800 million Rupiah	2 years and a fine of 8 billion Rupiah
111 paragraph (2)	5 years and a fine of paragraph 1 plus 1/3	lifetime or 20 year and fine paragraph 1 plus 1/3

<b>112 paragraph (1)</b>	4 years and 800 million Rupiah	12 years and 8 billion Rupiah
<b>112 paragraph (2)</b>	5 years and a fine of max paragraph 1 plus 1/3	for life or 20 years and a fine of max (paragraph 1) plus 1/3

Source: Act No. 35 of 2009 concerning Narcotics

If a judge is sentenced to a narcotics crime, a judge will pass a verdict between the limits specified in the Narcotics Law. Where in this Narcotics Law there are minimum and maximum limits on the criminal threat, which this will be a benchmark/guideline in sentencing by judges. With these guidelines, a judge can pass a verdict within the minimum limit and it can also be in the maximum limit.<sup>15</sup>

#### 4. Conclusion

Criminal sanctions in Act No. 35 of 2009 concerning Narcotics, it is known that there are minimum and maximum sanctions which are in Article 111 to Article 148 of Act No. 35 of 2009 concerning Narcotics. Then the weighting of penalties in Act No. 35 of 2009 can also be seen from its nature, which is cumulative, meaning that if a person is proven to have committed a narcotic crime, he will be subject to imprisonment and a fine. With the existence of a special Minimum criminal system, as contained in Act No. 35 of 2009 concerning Narcotics, it is expected that perpetrators of criminal acts of drug abuse can be subject to severe penalties, this is because every year the number of perpetrators of narcotics crimes is increasing/increasing. , where one of the causes cannot be separated from the lightness of the decision handed down by the judge so that the imposition of a crime does not create a deterrent effect for the perpetrators. Even though it is very clear that narcotics have a very bad impact on their users, even narcotics crimes are very dangerous for the interests of the nation and state.

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<sup>15</sup>Muladi dan Barda Nawawi Arief. (1998). *Teori-Teori dan Kebijakan Pidana*, Bandung, Alumni Press, p.27

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