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Ratio legis of special minimum limit regulation in narcotics law

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ABSTRACT

Narcotics crime in society (especially in Indonesia) shows an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, adolescents, and the younger generation in general. Based on this, the government must increase efforts to prevent and eradicate narcotics crimes by any means, whether reforming the Narcotics Law, imposing strict sanctions and so on. The purpose of this research is to find out how the legal ratio of the Special Minimum Limit Regulation in the Law on Narcotics. This research is normative legal research with a conceptual approach and a philosophical approach. The legal materials used are primary and secondary with the technique of analyzing legal materials using the interpretation method. The results of the study indicate that the Ratio legis regulation specific minimum criminal provisions in the three laws studied, namely: the Narcotics Law and the Supreme Court Circular Number 03 of 2015, is intended to prevent disparities in the sentencing of crimes by judges. The regulation of types of criminal sanctions in legislation is one of the functions of the State to protect legal interests, in the form of life, property and dignity. The regulation of criminal sanctions is one of the criminal policy systems that can be seen from several aspects, namely the criminal system, namely: types of sanctions, alternative and cumulative forms of sanctions and their duration, namely the maximum-minimum of the punishment threatened.

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Introduction

In today's society we often hear about narcotics. Narcotics itself on the one hand is a drug or material that is useful in the field of treatment or health services and the development of science and on the other hand can also cause a very detrimental dependence if misused or used without strict and careful control and supervision. Importing, exporting, producing, planting, storing, distributing, and/or using Narcotics without strict and thorough control and supervision and contrary to the laws and regulations is a Narcotics crime because it is very detrimental and is a very big danger to human life, society, nation and state as well as Indonesia's national security.

Narcotics crime has been transnational in nature, carried out using a high modus operandi, advanced technology, supported by an extensive network of organizations, and has caused many victims, especially among the nation's young generation which is very dangerous to the life of the community, nation and state. Seeing the dangers that threaten the abuse and circulation of Narcotics, the representatives of the people sitting in the legislative body (DPR) together with the executive (Government) have enacted Law Number 9 of 1976 concerning Narcotics. Then, Law No. 9/1976 on Narcotics was replaced with Law No. 22/1997 on Narcotics. At the General Assembly of the People's Consultative Assembly of the Republic of Indonesia in 2002 through the Decree of the People's Consultative Assembly of the Republic of Indonesia Number VI/MPR/2002, it was recommended to the House of Representatives of the Republic of Indonesia and the President of the Republic of Indonesia to make changes to Law Number 22 of 1997 concerning Narcotics.

Law Number 22 of 1997 concerning Narcotics regulates efforts to eradicate narcotics crimes through threats of fines, imprisonment, life imprisonment, and death sentences. In addition, Law Number 22 of 1997 also regulates the use of Narcotics for the benefit of treatment and health and regulates medical and social rehabilitation (Mertokusumo, 1999). However, in reality narcotics crime in

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society shows an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, adolescents, and the younger generation in general.

Narcotics crime is no longer carried out individually, but involves many people who together, even constitute an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels. Based on this, in order to increase efforts to prevent and eradicate narcotics crimes, it is necessary to update Law No. 22 of 1997 concerning Narcotics. So on October 12, 2009, Law Number 22 of 1997 concerning Narcotics (State Gazette of the Republic of Indonesia of 1997 Number 67, Supplement to the State Gazette of the Republic of Indonesia Number 3698); and Attachments regarding the types of Psychotropics Group I and Group II as contained in the Attachment to Law Number 5 of 1997 concerning Psychotropics (State Gazette of the Republic of Indonesia of 1997 Number 10, Supplement to the State Gazette of the Republic of Indonesia Number 3671) which have been transferred to Narcotics Category I are revoked and declared invalid with the enactment of Law Number 35 of 2009 concerning Narcotics (Adi, 2009).

In addition, the enactment of Law Number 35 of 2009 concerning Narcotics is a consistency of Indonesia's proactive attitude to support the international movement in combating all forms of narcotics crime and a reflection that the Indonesian Government is no longer playing games in preventing and eradicating the abuse and illicit trafficking of Narcotics. which is very detrimental and endangers the life of the community, nation and state, which is applied by imposing severe criminal sanctions. In Law Number 35 of 2009 it is seen that criminal sanctions are formulated as minimum criminal sanctions, both imprisonment and fines. For example, for narcotics dealers to the public, the threat of criminal sanctions is in the form of imprisonment for a minimum of 5 (five) years and a fine of at least Rp. 1 billion as stipulated in Article 114 of Law Number 35 of 2009 concerning Narcotics (Soerjono & Daniel, 2011).

The threat of minimum criminal sanctions contained in Law Number 35 of 2009 concerning Narcotics as a substitute for Law Number 22 of 1997 is heavier than what was written in the previous Narcotics Law. Law Number 35 of 2009 concerning Narcotics has clearer and stricter sanctions than Law Number 22 of 1997. The sanctions are clearer, and there are many changes in this new Law, where minimum criminal sanctions are regulated in this Law. This is the difference with the old law where there is no minimum penalty, only a maximum, such as for class one narcotics dealers, where in the old law no minimum sanctions were stated, but in Law Number 35 of 2009 concerning Narcotics clearly the threat of criminal sanctions was sounded minimum. However, although Law Number 35 Year 2009 has formulated the threat of minimum criminal sanctions, both imprisonment and fines, and has also been applied in criminal justice practice, which is seen in the decisions (verdicts) that impose minimum criminal penalties on accused of criminal acts of Narcotics, but it turns out that as the author knows, especially from the mass media coverage, both print and electronic, that the spread and abuse or criminal acts of Narcotics are no longer only in big cities, but have entered small towns and penetrated into sub-districts and even to the village. When viewed from the user.

Based on the above background, we aim to know how the legal ratio of the Special Minimum Limit Regulation in the Law on Narcotics.

This research is normative legal research which is based on the prevailing laws and principles. This type of research method can be referred to as doctrinal research and usually comes from research sources from libraries. Most of the research directions on this one relate to written regulations and are closely related to the literature (Soekanto, 2007). This study uses two approaches, namely a conceptual approach and a philosophical approach. The conceptual approach is used to find out in more detail and detail the meaning contained in the terms used in the laws and regulations conceptually and their application in practice and decisions (Marzuki, 2013). A philosophical approach is used to gain a deeper understanding of the social implications and impacts of the application of a rule on society by looking at history, philosophy, linguistics, social and political implications for the enforcement of a rule of law.

The legal materials used are primary and secondary legal materials. Primary legal materials are legal materials that are authoritative, which means they have authority. Primary legal materials include the 1945 Constitution, laws and decisions relating to Narcotics. Secondary Legal Materials include Scientific Works, Legal Opinions, Doctrines or theories contained in books, Legal Dictionary, Big Indonesian Dictionary (KBBI), and News on online media/websites.

The technique of searching for legal materials is carried out by means of a literature study, namely searching for legal materials in the library by searching, collecting, studying, understanding, and quoting from books or literature, laws and regulations, previous research, journals, documents, reports or archives, expert opinions, and articles that can explain legal concepts (Nasution, 2008). Legal Material Analysis Techniques is carried out using the interpretation method. The interpretations used in this study are as follows (Wijayanti & Achmad, 2011):

- i. Authentic interpretation is a method of interpretation that is carried out by looking at the meaning of the terms contained in the law itself.
- ii. Systematic interpretation is the interpretation of the law as part of the overall legal system by linking it with other laws.
- iii. Historical interpretation is the interpretation of the meaning of the law according to its occurrence by examining history, both the history of the law and the history of the occurrence of the law.

Special Minimum Criminal Limit Regulation in Law

One of the efforts to overcome crime is to use criminal law by giving sanctions in the form of punishment. These countermeasures have often been the subject of debate and discussion regarding the different roles of criminals. The difference is regarding the role of crime in dealing with the problem of criminal acts of crime and violations that have lasted for hundreds of years through efforts to control anti-social acts by imposing a sentence on someone who is guilty of violating criminal regulations. This is "a social problem that has an important legal dimension" (Prasetyo, 2011).

The effort to impose punishment has led to the use of legal remedies in criminal law as an effort to overcome social problems, including in the field of law enforcement policies. The use of legal remedies is also included in the field of social policy, namely all rational efforts to achieve public welfare. The problems that arise in the policy, one of the problems that are included in the policy problem is that the use of criminal law is actually not a necessity. Absolutes in a policy do not exist because in essence in policy problems people are faced with an assessment and selection of various alternatives. The problem of controlling or overcoming crime using criminal law is not only a social problem as stated by Pecker above, but is also a policy problem.

Combating crime by using criminal sanctions is the oldest way, as old as human civilization itself. There are also those who call it the "old philosophy of crime control" (Sasangka, 2003). The crime emerged as a policy problem, so there were those who questioned whether the crime needed to be tackled, prevented or controlled by using criminal sanctions. While there are those who argue that criminals or lawbreakers in general do not need to be subject to a crime. According to this opinion, crime is "a relic of our past savagery" (a vestige of our savage past) which should be avoided.

In the history of criminal law, it is full of descriptions of treatment which, when measured by human parameters, is now seen as cruel and transgressing. Continental Europe and Britain experienced a criminal reform movement towards a humanistic reaction to criminal atrocities. This situation raises the basis for the view that the retributive theory or the theory of retaliation in terms of punishment is a relic of barbarism. So that the perpetrator of the crime cannot be blamed for his actions and cannot be subject to criminal sanctions because a criminal is a special type of human who has organic and mental abnormalities. This situation shows that it is not a crime that should be imposed on him, but what is needed is maintenance actions that aim to improve.

Countries that are developing must have many social issues that are very urgent, including the problem of social deviation. This social deviation is one of the consequences that must be accepted by a developing society towards a society that is undergoing a transformation towards a modern society. These deviations arise when there is a rule that is violated as an act that is considered deviant due to a violation of the rules of criminal law which is referred to as a crime. Crime is a form of human behavior that often has very detrimental consequences, not only for certain individuals but also for society and even the state. This can be seen by seeing that a crime is one of the social problems which because of the growth and development of life in society, it grows forms of crime from traditional crimes increasing to an unconventional crime that can touch the public interest, the general economy, the state economy, human rights and others.

Some of these crimes are due to their extremely disgraceful nature, so the threat of punishment is increased by the legislators, namely behaviors that cause turmoil in society, such as persecution, crimes against the soul, integrity of body and soul as well as human freedom. Muladi takes into account the various interests related to the enforcement of criminal law, it appears that there are international tendencies, one of which is by developing special maximum (criminal) sanctions for certain crimes (Loeqman, 2002). The development of the special minimum punishment is in order to reduce the disparity of sentencing and to show the severity of the crime committed (Muladi, 2002).

Criminal disparity is "the application of unequal criminal acts against the same criminal acts or against criminal acts of a dangerous nature that can be compared without a clear basis of justification" (Muladi & Arief, 2005). Disparities and special minimum penalties are interrelated as Andi Hamzah stated:

Due to the variety of crimes and actions listed in the Criminal Code and legislation outside the Criminal Code, it is often an alternative in one Article, in addition to the absence of a specific minimum for each crime listed in these Articles, as is the case in the United States of America, then judges in Indonesia have very broad freedom in determining the severity of the sentence to be imposed on the defendant. As a result of such provisions, sometimes there are two sala offenses, for example murder, the punishment is very different, one for example is five years in prison while the other is ten years in prison. This is where the advantage lies if the minimum punishment is included in each article of the criminal law (Hamzah, 1993).

Andi Hamzah's opinion was responded to by the Draft Criminal Code Committee, BPHN and the Ministry of Justice of the Republic of Indonesia who have made a draft (concept) of the new Criminal Code by discussing the issue of a special minimum system. The special minimum threat system which has not been recognized in the Criminal Code is based on the main idea (Arief, 1996):

- i. To avoid the existence of a very glaring criminal disparity for offenses which essentially do not differ in quality.
- ii. To make general prevention more effective, especially offenses deemed dangerous and disturbing to the public.
- iii. It is analogous to the idea that if in certain cases the maximum penalty (general or special) can be increased, then the minimum sentence should also be aggravated in certain cases.

Crime, if it is related to one of the main objectives of punishment, namely preventing criminals and other people who have the intent and purpose to commit a crime, then the second point of view of the adoption of a special minimum punishment (general prevention) in the concept of the Criminal Code is in line with sentencing purposes. This is as expressed by Muladi (2002) that general prevention of criminal acts means "that the punishment imposed by the court is intended to prevent other people from committing criminal acts". The 2013 Criminal Code concept which determines the specific minimum for imprisonment can be seen in Book I Article 69 paragraph (2) whose formulation is as follows: "A prison sentence for a certain time is imposed for a maximum of 15 (fifteen) consecutive years or a minimum of 1 (one) day except special minimum".

Regulation specific minimum criminal threats in the Criminal Code Bill, is based on:

- i. Imprisonment is one type of crime that is considered quite heavy and risky. Therefore, there is a tendency to adopt a selective, limiting policy in the use of imprisonment.
- ii. Starting from the above thought, to give the impression or picture that imprisonment is a type of punishment that is quite severe and requires a long period of time in fostering/correctional, then the size of the weight assessed is less than 1 (one) year, it is deemed unnecessary to be threatened with imprisonment.

The special minimum threat system, which has not been recognized in the Criminal Code, was later adopted by a special minimum threat based on the following points:

- i. In order to avoid a very glaring criminal disparity for offenses that are essentially different in quality.
- ii. To make general prevention more effective, especially for offenses deemed dangerous and disturbing to the public.
- iii. It is analogous to the idea that if it is aggravated, the minimum sentence should be aggravated, the minimum sentence should be aggravated, then the minimum sentence should be aggravated in certain cases.

The "special minimum" pattern for criminal offenses can be stated as follows:

- i. In principle, the special minimum punishment is an exception, namely for certain offenses that are considered very harmful, dangerous or disturbing to the community and offenses that are qualified or aggravated by their consequences, as a quantitative measure are offenses which are punishable by imprisonment of more than 7 (five) years. seven) years (up to the death penalty) which may be subject to a special minimum, because those offenses are classified as "very serious" but in certain cases the standard can be lowered to offenses classified as "severe" (i.e. 4-7 years in prison).
- ii. The specific minimum duration, initially ranging from 3 years to 7 years, then developed to range from 1 year to 7 years.
- iii. As with the special maximum, in principle even this special minimum threat in certain cases must be reduced or mitigated, for example,
 - a. Because there are things that mitigate the crime, especially minors.
 - b. Because of error or negligence. Regarding some the amount of the deduction cannot be determined with certainty, but it is left entirely to the judge.

Umam (2010) describes the advantages and disadvantages of a special minimum system. The intended benefits are:

- i. The existence of legal certainty, in the sense that in carrying out its duties as the case breaker party has a standard or time limit, namely a special minimum limit for each type of crime that is considered detrimental to the community. This means that it cannot impose a lighter sentence than the minimum limit that has been determined.
- ii. In terms of coaching, the time factor is very decisive in the context of efforts to change the attitudes and behavior of a prisoner, especially in the process of socialization towards resocialization in community life.
- iii. With the existence of a special minimum system, it will reduce what is known as "criminal disparity" in the judge's decision, by itself it will give satisfaction to both the perpetrators, victims and the community.
- iv. It is hoped that it will provide relief for law enforcers in carrying out their duties, especially for judges as case breaker parties and as correctional institutions where prisoners are fostered.
- v. Improving social welfare in order to achieve criminal political goals.

Meanwhile, the intended disadvantages of the special minimum system include:

- i. Judges in carrying out their duties, against certain types of criminal acts (those which are threatened with a special minimum) do not have the power to impose a sentence below the minimum standard that has been determined.
- ii. In its application, it is feared that it will create a legal force.

A special minimum system that has a positive impact especially on point c above to reduce the possibility of "criminal disparity". This is in accordance with the opinion of Arief (1996) which states that,

The need for this special minimum can be felt from the unrest of the community or the community's lack of satisfaction with the imprisonment that has been imposed in practice, especially the crime that is not much different between high-class criminals and lower-class criminals. Arief (1996) also states "... in principle a special minimum penalty is an exception for certain offenses that are considered very detrimental, dangerous or disturbing to the community and offenses that are qualified by their consequences (Erfolsqualifizierte delikte) as a quantitative measure". This benchmark in certain cases can be lowered to offenses classified as

“severe” (4 years imprisonment to 7 years). As for the specific minimum length, it is adjusted to the nature and quality or weight of the offense concerned.

In subsequent developments (April 1989 Assessment Team Meeting, there was a change in the special minimum pattern which ranged from 1 (one) to 7 (seven) years with the following distribution,

Table 1: Type of Punishment and Threats

No	Type Of Punishment	Maximum Threat	Minimum Threat
1	Severe Punishment	4 Years – 7 Years	1– 2 Years
		7 Years – 10 Years	1- 3 Years
2	Very Severe Punishment	12 Years – 15 Years	4 – 5 Years
		Dead/S H/20 Years	6 – 7 Years

The offenses that are threatened with a special minimum are offenses classified as "severe" and "very serious" with a maximum imprisonment of 4 (four) years. This special minimum pattern has changed in recent developments, which ranges from 1 (one) – 5 (five) years with the following categories,

Table 2: Offense Category and Threat

No	Offense Category	Maximum Threat	Minimum Threat
1	Severe Punishment	4 Years – 10	1 Year
2	Very Severe Punishment	7 Years – 10 Years	2 Years
		12 Years – 15 Years	3 Years
		Dead/S H/20 Years	5 Years

This proves that there has been a change from the previous highest minimum threat of 7 (seven) years to 5 (five) years. The minimum penalty pattern is no longer divided into a range of imprisonment but is made based on the absolute length of punishment, namely 1 (one), 2 (two), 3 (three), or 5 (five) years.

The minimum specific criminal pattern for imprisonment is 1 (one) year, which is based on the following points of view:

- i. Imprisonment is one type of crime that is considered quite heavy and risky. Therefore, there is an international tendency to adopt a selective, restrictive policy in the use of imprisonment. Imprisonment is only intended for certain actions that are considered quite severe for certain people who are deemed necessary to receive guidance through imprisonment with a correctional system.
- ii. Starting from the thought above, to give the impression or description of criminal material which is a type of crime that is quite severe and requires a long time in fostering/correctional, then 1 (one) year is used. Therefore, offenses whose weight is considered less than 1 (one) year are considered as "very light" offenses and are deemed not to be subject to imprisonment.
- iii. If the offense deemed "very light" is also threatened with a light sentence (within a few months or weeks), then this will give the opportunity for a short prison sentence to be imposed. The international trend (among others seen from the results of the recommendations of the United Nations Congresses regarding The Prevention and Treatment of Offenders) requires the limitation of the possibility of imposing short prison sentences, because in addition to bringing negative effects, it is also seen as less supportive of the coaching system. correctional facilities and can disrupt the Standard Minimum Rules (SMR) system. With the implementation of a minimum limit of 1 (one) year, it does not mean that short imprisonment is abolished altogether, but at least it is expected to reduce the number of short prison sentences, but at least it is hoped that it can reduce the imposition of sentences that are too short if the maximum threat is too light. The possibility of imposing a short sentence is still given, because in certain cases the short sentence is still needed.

From the description above, it can be seen that the background of the special minimum imprisonment is in addition to avoiding criminal disparities but also to increase general prevention of certain offenses that are considered very serious for people's lives by avoiding short-term imprisonment as much as possible which can have a negative effect. against non-criminals.

Ratio Legis Regulation Minimum Limits for Narcotics Crime

To be able to understand the meaning of narcotics crime, it is necessary to explain the meaning of crime. The use of terms and definitions of criminal acts is quite diverse, in *Wetboek van Strafrecht* (Book of Criminal Law) the term *Strafbaar feit* is known. The literature on criminal law often uses the term offense while lawmakers in formulating laws use the term criminal event, or criminal act or criminal act (Poernomo, 1994). Crimes in other terms are also known as offenses, criminal acts, criminal events, acts that may be punished which in Dutch are called *strafbaar feit* (Prodjohamidjoyo, 1997). Wirjono Prodjodikoro stated that a criminal act is a violation of norms in three other areas of law, namely civil law, constitutional law and government administrative law, which the legislators respond to with a criminal penalty (Prodjodikoro, 2002). Theoretically a criminal act must include the following elements:

The flow of monism suggests that *strafbaar feit* includes elements of action (commonly called objective elements), namely elements against the law and elements of no justification or elements of responsibility (commonly called: subjective elements), namely elements of being able to take responsibility, elements of intentional mistakes and or negligent, and the element of no forgiving reason. Meanwhile, according to the flow of dualism, criminal acts according to their form or nature are against the law and harmful actions in the sense of contradicting or hindering the implementation of the order in social interactions that are considered good and fair. Because there is a separation between actions (commonly called subjective groups), which include elements against the law, elements without justification, and from the maker (commonly called subjective groups) include elements of being able to take responsibility, elements of error: intentional and/or negligent and elements not there is a forgiving reason. In addition to the elements of the crime mentioned above, it must also be noted the general principles of punishment as stated in Article 1 paragraph (1) of the Criminal Code which reads, no act can be punished except by the strength of the criminal rules in the legislation. that existed before the deed was done.

Article 1 paragraph (1) of the Criminal Code is known in Dutch as the principle of *Nulum deliictum, nula poenas sine praevia lege poenali*. With this principle, it is hoped that the law will defend the community by not arbitrarily punishing and prosecuting people without previously being regulated in standard legal provisions. For law enforcers, this principle serves as a guide so that they do not act outside the provisions of the law, do not act arbitrarily, all parties must be treated equally before the law, equality before the law.

From the description above, it can be stated that the abuse of Narcotics is acts that have fulfilled the elements of a criminal act as mentioned above, which have actually been regulated in the applicable law, namely in Law no. 35 of 2009 concerning Narcotics which replaces Law no. 22 of 1997 concerning Narcotics and other applicable laws and regulations.

Law No. 35 of 2009 concerning Narcotics is one of the laws that regulate criminal acts outside the Criminal Code. The relationship between Law no. 35 of 2009 concerning Narcotics with the Criminal Code can be described as follows below. In Article 103 of the Criminal Code it is stated that the provisions in Chapters I to VIII of this book (Book One: General Rules), also apply to acts which are subject to criminal penalties by other provisions of the law, unless by law. the law is determined otherwise. Similarly, Article 63 paragraph (2) of the Criminal Code states, that if an act is in more than one criminal rule, only one of those rules, if different, is imposed which contains the most severe main criminal threat.

From the two articles it can be concluded that if an act is threatened with the general criminal provisions in the Criminal Code Article and the special criminal provisions, namely Law no. 35 of 2009 concerning Narcotics, then what is imposed is specifically Law no. 35 of 2009 concerning Narcotics. This is an embodiment of the principle of "*lex specialis derogat lex generalis*", which means that special laws override general laws.

These deviations do not only occur in the material law as stated above, but also in the formal law. UU no. 35 of 2009 concerning Narcotics is a special criminal act, namely narcotics crime, and specifically includes material and formal law.

Specificity in Law no. 35 of 2009 concerning Narcotics concerning Narcotics, in its material law, among others are:

- i. there is a threat of imprisonment and a minimum and maximum fine in several articles.
- ii. the main punishment is imprisonment and a fine imposed together (cumulatively) in several articles.
- iii. the decision of a criminal fine if it cannot be paid by the perpetrator of the Narcotics crime, a maximum imprisonment of 2 (two) years is imposed in lieu of a fine (Article 148);
- iv. perpetrators of experimentation and conspiracy to commit certain narcotics crimes, are threatened with the same punishment in accordance with the provisions as regulated in those articles (Article 132)
- v. criminal threats against criminal acts committed in an organized manner or carried out by corporations are more severe, namely with a weighting of 3 (three) times the criminal fine (Article 130 paragraph (1));
- vi. there are criminal penalties for perpetrators who commit certain acts and persuade children who are not old enough to commit narcotics crimes or to use Narcotics (Article 133);
- vii. the parents or guardians of underage addicts who intentionally fail to report are subject to criminal sanctions, while Narcotics addicts who are not old enough and have been reported by their parents or guardians are not subject to criminal prosecution (Article 128);
- viii. Narcotics addicts who are old enough and intentionally do not report themselves are subject to criminal sanctions, as well as the families of Narcotics addicts are also subject to criminal sanctions (Article 134);

- ix. there are special provisions that regulate residives with a maximum criminal threat plus 1/3 (one third), but the threat with an additional 1/3 (one third) does not apply to criminals who are sentenced to death, life imprisonment, or imprisonment 20 (twenty) years (Article 144).

Specificity in Law no. 35 of 2009 concerning Narcotics regarding Narcotics against its formal law, among others:

- i. Cases of abuse and illicit trafficking of Narcotics, including cases that take precedence over other cases to be submitted to court for immediate settlement. And the process of examining Narcotics criminal cases and Narcotics Precursor criminal acts at the level of appeal, cassation level, review, and execution of the death penalty, as well as the process of granting clemency, the implementation must be accelerated in accordance with the laws and regulations (Article 74).
- ii. Investigators, both Polri investigators, National Narcotics Agency (BNN) investigators and civil servant investigators (PPNS) have additional powers and procedures that deviate from the Criminal Procedure Code;
- iii. there is a special procedure for destroying evidence of Narcotics (Article 92). The provisions regarding narcotics crimes in Law Number 35 of 2009 concerning Narcotics are contained in Articles 111 to 148, which regulates the penalties that can be imposed on perpetrators of narcotics crimes.

Forms of Narcotics Crime

The forms of narcotics crime that are commonly known include the following (Makara, 2003).

- i. Misuse/overdose; this is caused by many things.
- ii. Drug trafficking; because of ties to a chain of narcotics circulation, both nationally and internationally
- iii. Selling and buying narcotics, this is generally motivated by the motivation to seek material gain, but there is also a motivation for satisfaction.

Of the three forms of criminal acts, Narcotics is one of the causes for the occurrence of various forms of criminal acts and violations, which directly cause demoralizing effects on society, the younger generation, and especially for the users of dangerous substances themselves, such as: murder; theft; mugging; mugging; extortion; rape; fraud; traffic sign violations; harassment of security forces, and others.

Criminal Sanctions Against Narcotics Crime Actors

The provisions regarding narcotics crimes and their sanctions in Law Number 35 of 2009 concerning Narcotics are contained in Articles 111 to 148. In connection with sanctions against narcotics crimes as mentioned in Articles 111 to 147 are crimes, except those in Article 148 are is a violation. In these articles, it is clear that the sanctions are the same as those regulated by Article 10 of the Criminal Code/KUHPP, which is explicitly regulated in Law Number 35 of 2009 concerning Narcotics, including the death penalty, which is stated explicitly. firmly in Article 113 paragraph (2) of Law Number 35 of 2009 concerning Narcotics, and several subsequent articles. The author, in connection with the issues discussed in this dissertation, presents several articles in Law Number 35 of 2009 concerning Narcotics, including Articles 111, 112, 113 and Article 114.

Article 111 of Law Number 35 of 2009 concerning Narcotics reads as follows:

- i. Anyone 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 a minimum of Rp.800,000,000.00 (eight hundred million rupiah) and a maximum of Rp.8,000,000,000.00 (eight billion rupiah).
- ii. 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. 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 111 of Law Number 35 of 2009 concerning Narcotics provides a minimum prison sentence of 4 (four) years (paragraph (1)) and a minimum of 5 (five) years (paragraph (2)).

Article 112 of Law Number 35 of 2009 concerning Narcotics reads as follows:

- i. Any person who without rights or against the law owns, keeps, controls, or provides Narcotics Category I which 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 Rp800,000,000. ,00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).
- ii. 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).

Article 112 of Law Number 35 of 2009 concerning Narcotics provides a minimum prison sentence of 4 (four) years (paragraph (1)) and a minimum of 5 (five) years (paragraph (2)).

Article 113 of Law Number 35 of 2009 concerning Narcotics reads as follows:

- i. Any person who without rights or against the law produces, imports, exports, or distributes Narcotics Category I, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 1,000,000. 0,000.00 (one billion rupiah) and a maximum of Rp.10,000,000,000.00 (ten billion rupiah).
- ii. In the case of the act of producing, importing, exporting, or distributing Narcotics Category I as referred to in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in the form of non-plants weighing more than 5 (five) trees. five) grams, the perpetrator is sentenced to death, life imprisonment, or a minimum imprisonment 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 113 of Law no. 35 of 2009 concerning Narcotics provides a minimum prison sentence of 5 (five) years. Article 114 of Law Number 35 of 2009 concerning Narcotics reads as follows:

- i. Everyone who without rights or against the law offers for sale, sells, buys, receives, becomes an intermediary in buying and selling, exchanging, or delivering Narcotics Category I, shall be sentenced to life imprisonment or a minimum imprisonment of 5 (five) years. and a maximum of 20 (twenty) years and a minimum fine of Rp.1,000,000,000.00 (one billion rupiah) and a maximum of Rp.10,000,000,000.00 (ten billion rupiah).
- ii. In the event of an act of offering for sale, selling, buying, acting as an intermediary in buying and selling, exchanging, delivering, or receiving Narcotics Category I as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or exceeds 5 (one) kilograms. five) tree trunks or in the form of non-plants weighing 5 (five) grams, the perpetrator is sentenced to death, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

Paragraph (1) in Article 114 of Law no. 35 of 2009 concerning Narcotics, it provides a minimum prison sentence of 5 (five) years, while paragraph (2) in Article 114 of Law no. 35 of 2009 concerning Narcotics provides a minimum prison sentence of 6 (six) years.

Conclusion

The ratio legis setting specific minimum criminal provisions in the three laws studied, namely: the Narcotics Law and the Supreme Court Circular Number 03 of 2015, is intended to

prevent the occurrence of disparities in the sentencing of crimes by judges. The regulation of types of criminal sanctions in legislation is one of the functions of the State to protect legal interests, in the form of life, property and dignity. The regulation of criminal sanctions is one of the criminal policy systems that can be seen from several aspects, namely the criminal system, namely: the types of sanctions, the form of alternative and cumulative sanctions and the duration, namely the minimum and maximum punishment imposed. The regulation of special minimum criminal provisions in the law by legislators is intended to reduce disparities by judges when they are about to make sentencing decisions against perpetrators of criminal acts. Thus, it is necessary to revise the law under investigation by eliminating the minimum criminal provisions specifically for the Narcotics Law. The special minimum sanctions arrangement is felt to be unfair, because judges will be very bound by criminal norms in the law. Increasing the professionalism of judges in the position and independence of judges in criminal justice institutions needs to be realized through the recruitment of qualified judges, both in terms of intelligence and in terms of morality.

References

- Adi, K. (2009). *Kebijakan Kriminal dalam Penanggulangan Tindak Pidana Narkotika oleh Anak*. Malang, UMM Press.
- Arief, B.N. (1996). *Bunga Rampai kebijakan Hukum Pidana*. Bandung, Citra Aditya Bhakti.
- Hamzah, A. (1993). *Sistem Pidana dan Pemidanaan di Indonesia*. Jakarta, Pradnya Paramita.
- Loeqman, L. (2002). *Pidana dan Pemidanaan*. Jakarta, Grafindo.
- Makara, M.T. et al. (2005). *Tindak Pidana Narkotika*. Bogor, Ghalia Indonesia.
- Marzuki, P.M. (2013). *Penelitian Hukum*. Jakarta, Kencana Prenada Group.
- Mertokusuma, S. (1999). *Mengenal Hukum, etc, Kedua*. Yogyakarta, Liberty.
- Muladi. (2002). *Hak Asasi Manusia, Politik Dan Sistem Peradilan Pidana*. Semarang, Badan Penerbit Universitas Diponegoro.
- Muladi and Arief, B.N. (2005). *Teori-teori dan Kebijakan Pidana*. Bandung, P.T. Alumni.
- Nasution, B. (2008). *Metode Penelitian Ilmu Hukum*. Bandung, CV Mandar Maju.
- Poernomo, B. (1994). *Asas-Asas Hukum Pidana*. Bogor, Ghalia Indonesia.
- Prasetyo, T. (2011). *Kriminologi dalam hukum pidana*. Bandung, Nusa Media.
- Prodjodikoro, W. (2002). *Tindak-Tindak Pidana Tertentu Di Indonesia*. Bandung, Penerbit PT. Refika Aditama.
- Prodjohamidjoyo, M. (1997). *Memahami Dasar-Dasar Hukum Pidana Indonesia*. Jakarta, Pradnya Paramita.

- Sasangka, H. (2003). Narkotika dan Psikotropika dalam Hukum Pidana (untuk Mahasiswa dan Praktisi serta Penyuluh Masalah Narkoba). Bandung, CV Mandar Maju.
- Soekanto, S. (2007). Pengantar Penelitian Hukum, cet III, Jakarta, Penerbit Universitas Indonesia UI- Press.
- Sujono, A.R. and Daniel, B. (2011). Komentar & Pembahasan Undang- Undang Nomor 35 Tahun 2009 tentang Narkotika. Jakarta, Sinar Grafika.
- Umam, A. (2010). Penerapan Pidana Minimum Khusus. *Varia Peradilan Tahun XXV No. 295* IKAHI. Jakarta.
- Wijayanti, A. and Achmad, L.S. (2011). Strategi Penulisan Hukum. Bandung, Lubuk Agung.

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