

Sentencing Under The Special Minimum Threat For Small-Scale Drug Traffickers: Challenges And Implications For Justice And Drug Eradication Policy

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Abstract

The imposition of sentences below the minimum penalty specifically for small-scale drug dealers has become an important debate in the context of criminal justice. This study aims to analyze the practice of judicial independence in small-scale drug trafficking cases and identify the challenges and implications for substantive justice and drug eradication policy in Indonesia. The method used in this study is comparative normative juridical, this research analyses the applicable legal rules in Indonesia and compares them with practices in several other countries. The results show that the application of sentences below the special minimum threat has a significant influence on drug eradication policies, but also raises dilemmas related to justice for offenders with a small role. Comparatively, practices in other countries show a more flexible approach, which integrates restorative justice and rehabilitation principles. This study recommends the revision of legal policies in Indonesia by adopting a more proportional approach, as well as improved training of law enforcement officers to ensure fair and consistent application. This research is expected to contribute to the formation of a more effective, humane, and equitable drug policy.

Keywords: *Judicial Independence, Small-Scale Drug Dealers, Justice, Special Minimum, Anti-Narcotics Policy*

INTRODUCTION

In the context of the state, law essentially functions as the primary standard for national life. The function of law as a tool to control social behavior, direct social change, and strengthen integration emphasizes the role of law in providing protection (Nonet, Selznick, and Kagan 2017). The state has a responsibility to protect society from crime. In Indonesia, drug trafficking is a serious problem and threatens social stability and public health. The government responded by enacting strict laws, including the threat of special minimum sentences in Law No. 35 of 2009 concerning Narcotics (Stahn 2017). Special minimum sentences are given with the aim of being a deterrent effect and supporting firm policies in eradicating narcotics. However, in practice, this special minimum sentence often does not take into account the characteristics of perpetrators involved in small-scale drug trafficking, or those referred to as small-scale drug dealers (Kahan 2019). Many small-scale drug dealers come from low socio-economic backgrounds and are involved in drug trafficking not because of a major criminal intent, but because of economic pressure or drug addiction (Nelson 2024). They are often victims of circumstances, so punishing them severely will not solve the underlying problems that caused them to become involved in the crime (Newman 2017).

In some cases, small-scale perpetrators may be drug users who are trapped in police operations such as undercover buys, where they are involved in drug transactions for small profits or even just shared use (Gundur 2020). In this situation, they may not be actual dealers, so they need to be treated differently from large dealers or syndicates. In addition, according to a report by the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham), it is known that most prisons in Indonesia are inhabited by drug convicts, recorded at 135,758 as of April 2022. The majority of drug convicts in Indonesia are small-scale perpetrators or users involved in drug trafficking in limited capacities. This fact

contributes significantly to the overload of correctional facilities (Qureshi 2016). Data shows that prisons in Indonesia are currently experiencing very severe overcapacity, where more than half of the prison inmates are drug convicts, mostly with small-scale trafficking cases (Gunarto and Bawono 2023). The application of special minimum sentences without considering the complexity and level of involvement of the perpetrators has led to an increase in the number of prison inmates that is not comparable to the available capacity. The number of prison inmates exceeding capacity (overcapacity) is the reason why coaching activities cannot be carried out optimally (Nuraeny and Utami 2019).

As explained by Douglas Husak, drug crime cases receive the longest prison sentences with the highest frequency, but this does not cause drug users to decrease. Since the enactment of Law No. 35 of 2009, there has been a fairly high increase in drug users and dealers being detained. According to the data obtained, in December 2010, it was recorded that there were 3,183 prisoners caught in drug cases until 2017 there was a very drastic increase of 90,616 drug cases or equivalent to 2,847%. The imposition of a prison sentence as an effort to minimize the occurrence of crime has caused pros and cons among researchers. Reflecting on the case in the United States which firmly followed up on criminal cases by giving prison sentences, but the crime rate in that country continues to increase. The large number of criminals who receive prison sentences certainly has an impact on increasing state spending (Brown 2014).

In this context, the authority of judges becomes an important instrument that allows flexibility in sentencing. Judges have the authority to impose sentences below the special minimum threat in certain cases, including cases of small-scale drug dealers, by considering the specific conditions of the perpetrators and the principles of justice. The use of sentences below the special minimum or those determined by applicable regulations can be one solution to overcome the problem of overload in prisons, by providing more proportional sentences and not always leading to imprisonment for small-scale perpetrators. This is in line with the rehabilitative objectives of criminal law in dealing with drug offenders. Heavy sentences for small-scale perpetrators can cause long-term stigma and make it difficult for them to return to society (Uswege Asobenie Mwakaheya 2019).

The authority of judges in providing flexibility to impose lighter sentences and allow perpetrators to improve themselves without excessive social stigma. The freedom of judges to impose sentences below the special minimum for small-scale drug dealers is needed to ensure proportionality, substantive justice, and efficiency in law enforcement. With the freedom of judges to decide under a special minimum threat, it can differentiate small-time offenders from big dealers who can provide more appropriate punishments based on the conditions of the perpetrators, as well as ensuring that legal and rehabilitation resources are used effectively in eradicating narcotics (Stinneford 2014).

Previous research by (Assiatun 2022) highlighted that the application of the minimum sentence is intended not to accentuate one of the principles whether it is certainty or justice but to realise a balance between the two. Another study by (Puryasandra 2023) revealed that the application of the minimum threat by the judge was because the defendant admitted his actions frankly, the defendant regretted his actions and promised not to repeat the criminal act, the defendant had family dependents, the defendant had never been convicted. However, the consequences of the judge's decision are contrary to the principle of legality and cause legal uncertainty.

Another research by Sudarto (2019) Judges in deciding narcotics cases have the authority to deviate from the special minimum provisions stipulated in the narcotics law, as long as it is based on adequate considerations. The independence of judges in imposing punishment below the special minimum must be implemented within the framework of the principle of judicial independence, which guarantees the independence of judges to produce objective and impartial

decisions. This independence is the basis for judicial institutions to work independently without external pressure or influence, in order to realise fair decisions.

The judges' opinions regarding the special minimum sentence policy can be divided into two groups. The first group is of the opinion that the special minimum sentence policy outlined in the law must be strictly adhered to and must not be ignored. In addition, the second group is of the opinion that in certain circumstances, judges can violate the special minimum sentence policy if it is necessary to achieve justice, because judges are not just mechanical enforcers of the law (Murphy 2016).

So on the other hand, the application of judicial independence in sentencing below the special minimum threat also raises its own challenges. There is concern that leniency in sentencing for small-scale drug dealers can weaken the government's firm policy in eradicating drug trafficking. This raises debate about whether the use of judicial independence in minor drug cases is in line with the goal of firm and effective law enforcement. Therefore, this study aims to further explore how the application of judicial independence through sentencing below the special minimum in the context of small-scale drug trafficking can provide a solution to prison capacity overload, as well as identify the challenges and implications for justice and drug eradication policies in Indonesia by using comparative studies of other countries in the use of law enforcement policies to eradicate drug crimes.

RESEARCH METHODS

The research method used in this study is a normative juridical approach with a comparative model. This research aims to analyse the application of special minimum sentences for small-scale drug dealers by comparing the legal systems in Indonesia and several other countries. The normative juridical approach is conducted through a review of relevant legislation, court decisions, and legal doctrine (Hamzani et al. 2023). The comparative model is used to identify differences and similarities in the regulation and implementation of special minimum sentences in various countries, in order to evaluate the fairness and effectiveness of the policy (Simbolon 2024). Secondary data is the main focus of this research, which is obtained through a literature review of drug laws, international reports, and law journals that address similar themes. The analysis is conducted systematically by evaluating the philosophical, juridical, and sociological basis of the special minimum sentencing policy.

RESULT AND DISCUSSION

In the context of law enforcement against narcotics crimes in Indonesia, the application of special minimum sentences is one of the important aspects regulated in Law Number 35 of 2009 concerning Narcotics. However, along with the increasing number of cases of small-scale drug dealers, questions arise regarding the effectiveness and fairness of the application of these special minimum sentences. Amidst these challenges, judicial independence has emerged as a mechanism that allows flexibility in sentencing, especially for cases of small-scale drug dealers involved in limited circulation. This discussion will explore the application of judicial independence in this context, identify the challenges faced, and analyze its implications for justice and drug eradication policies. By understanding these dynamics, it is hoped that a balanced solution can be found between individual justice and the effectiveness of law enforcement policies.

In some cases, judges impose sentences far below the special minimum to take into account factors such as minimal involvement, the perpetrator's social condition, or a less significant role

in the drug trafficking network. Although this may reflect substantive justice, there are concerns about the consistency of application and the potential for differences in treatment between similar cases. Judges who are authorized to determine decisions and try a criminal act have the power to impose sentences below the special minimum as the authority held by the judge as a discretion, attitude, having the freedom to determine and make decisions on the case being handled. When the crime is followed up in court, the judge has the authority to determine the follow-up received by the perpetrator of the crime by still referring to the legislation by considering it carefully.

Judicial power is the power held by a judge who has skills and deeply understands the value of law and upholds justice. Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 047/KMA/SKB/IV/2009 and the Chairman of the Judicial Commission of the Republic of Indonesia 02/SKB/P.KY/IV/2009. Referring to the decree, it explains that the decision given by the judge in trying a criminal act does not only refer to the policy of legislation, but also emphasizes the values of humanity and justice. Thus, in implementing the power to impose a criminal sentence, the criminal must be examined in accordance with the limits of authority *ex officio*.

In essence, the concept of freedom is understood as the power held by an authorized official to follow up on a case determined based on personal considerations and policies. The power of judicial freedom is the power given to a judge in determining the follow-up to a case handled through personal policies and considerations. The application of this concept aims to fulfill the value of justice adopted as a judge in making decisions. Justice and law are an inseparable unity because justice is the goal of law enforcement. The application of this concept for judges involves various aspects that support decisions not only rationality, but emphasizes a sense of humanity and morality. Decisions made by judges are created from moral contemplation both physically and mentally so that the decisions made uphold the principle of justice because the decisions made prioritize aspects of morality, by considering various coherent facts, using values and norms both physically and mentally so that they are comprehensive.

The application of judicial discretion in imposing sentences below the special minimums faces a number of challenges. One of the main challenges is the risk of inconsistency in sentencing. Wide judicial discretion can lead to significant differences in sentences for offenders with similar levels of involvement, which can be considered unfair. In addition, there are concerns that the use of judicial discretion to impose sentences below the special minimums can undermine the government's strong anti-narcotics policy, especially in the context of small-scale drug dealers who are often considered part of a wider systemic problem.

Another challenge is the subjective assessment of judges that can be influenced by various external factors, including social pressure or personal views on drug trafficking. This has the potential to cause legal uncertainty and confuse perpetrators about acceptable sentences. An example of the challenge of the use of judicial discretion in imposing criminal sentences below the special minimum threat is clearly seen in case number 182/Pid.Sus/2023/Pn Sbs juncto 3243 K/Pid.Sus/2024 in the name of the defendant Bahraini alias Abah Bin Jusmani. In this case, there was a difference in assessment between judges at the first level, appeal, and cassation regarding the imposition of sentences below the special minimum penalty for drug dealers. The District Court and the High Court decided the sentence according to the minimum limit stipulated in the law, namely imprisonment for 5 (five) years and 7 (seven) months and a fine of Rp1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 3 (three) months, while at the cassation level the Supreme Court issued a verdict below the special minimum threat, namely imprisonment for 2 (two) years and 6 (six) months and a fine of Rp1,000,000,000.00 (one billion rupiah) by considering certain factors, thus imposing a lighter sentence than the special minimum criminal provisions. This

difference reflects the complexity and challenges in the application of discretion in the criminal justice system.

One of the main challenges in implementing the imposition of sentences below the special minimum threat is maintaining a balance between legal certainty and a sense of justice. On the one hand, the law stipulates a special minimum criminal threat to provide certainty and consistency in law enforcement. However, on the other hand, each case has unique circumstances that may not be fully accommodated by rigid rules. In this case, the use of judicial independence by the Supreme Court cassation judge to impose a sentence below the special minimum penalty raises a debate about the extent to which judicial independence can be used without violating the principle of legal certainty.

In addition, differences of opinion between the panels of judges at various levels of the judiciary show challenges in interpreting the law relating to the application of judicial independence. District Court and High Court judges choose to follow the textual provisions of the law, while the Supreme Court places more emphasis on substantive justice by considering mitigating factors. This difference can create uncertainty for legal practitioners, as well as raise questions about the consistency of the application of judicial independence in the future.

The use of judicial discretion through the imposition of different special minimum criminal sentences at the cassation level also raises questions about its impact on law enforcement policies, especially in efforts to eradicate criminal acts regulated by special minimum criminal threats. If the imposition of criminal sentences is too loose, there is a concern that the preventive purpose of the minimum criminal threat will be reduced. On the other hand, if there is no room for the imposition of sentences below the special minimum, the legal system can become too rigid and insensitive to the individual circumstances of the accused.

Another challenge in the application of special subminimum sentences is the attempt to standardize their application without sacrificing the flexibility needed in certain cases. Each case has different facts and circumstances, making the application of criminal penalties difficult to standardize. As a result, there is a risk of injustice if the imposition of criminal penalties is applied inconsistently across similar cases.

To address these challenges, clearer guidance is needed on the limits of the use of special minimum sentences, without eliminating the flexibility needed in law enforcement. Developing more specific guidelines or parameters on the circumstances that may mitigate or aggravate sentences below special minimum sentences could be a solution to maintain consistency while ensuring a sense of fairness.

The implications of the application of special minimum sentence sentences by judges on criminal justice and drug eradication policies are very complex. On the one hand, the imposition of special minimum sentence sentences allows for fairer sentence adjustments for small-scale drug dealers, who may be involved in drug trafficking in a limited capacity and have significant mitigating factors. This can ensure that the sentence imposed is appropriate to the specific conditions of the perpetrator and is not too severe.

However, on the other hand, the application of criminal penalties below the special minimum threat can also affect the effectiveness of drug eradication policies. If the imposition of criminal penalties below the special minimum threat is widely used to reduce sentences for small-scale dealers, this can reduce the deterrent effect of punishment and reduce pressure on the justice system. In addition, the case of prison capacity overload is also an issue that needs to be considered. The use of criminal penalties below the special minimum threat can help reduce pressure on prison capacity by avoiding unnecessary imprisonment for small-scale offenders.

The use of criminal sentences below the special minimum threat by judges in small-scale drug cases can provide substantive justice for defendants whose role in the crime is very minimal. However, the application of criminal sentences below the special minimum threat can also cause

dissatisfaction among the public who expect strict law enforcement in eradicating narcotics, especially if the sentences imposed are considered too light. In the context of restorative justice, a softer approach can be considered more humane, but in the context of retributive justice, this can be considered a violation of legal certainty.

The application of sentencing under the special minimum penalty can send mixed signals to the drug eradication policy. On the one hand, giving lighter sentences to small-scale drug dealers can help in a more rehabilitative approach and provide them with opportunities to improve themselves. On the other hand, the application of sentencing under the special minimum penalty that is too frequent or loose can reduce the deterrent effect which is the main objective of the application of special minimum penalties in the context of drug eradication.

Comparatively, the legal practices related to drug crimes and the application of special minimum sentences vary across countries. Some countries have very harsh legal policies with strict minimum sentences, while others have a more humanistic approach with flexibility that allows judges freedom in sentencing. The following is an overview of how some countries implement special minimum sentence policies related to drug crimes.

1. United States

The United States is one of the countries with strict drug laws, with specific mandatory minimum sentences for various drug-related offenses, especially at the federal level. Specific Minimum Sentences in the United States are implemented, federal laws set minimum sentences for a number of drug crimes, including drug trafficking, distribution, and production. For example, if someone is found to be in possession of a large amount of drugs such as cocaine, methamphetamine, or heroin, they are required to receive a minimum prison sentence, usually 5 to 10 years, depending on the amount of drugs involved. So the freedom of the Judge is limited, therefore Judges in federal courts have little room to use their discretion and cannot impose sentences below the minimum limit set, unless the perpetrator provides significant cooperation in the investigation or trial. This policy has received much criticism for being too rigid and resulting in disproportionate sentences, especially for small drug offenders or users.

2. Netherlands

The Netherlands is known for its more lenient drug policies, especially when it comes to the use and distribution of small amounts. As such, there are no specific minimum sentences for drugs. In the Netherlands, the use of drugs such as cannabis is largely decriminalized. However, penalties for the distribution of hard drugs (such as heroin and cocaine) remain strictly enforced. However, judges in the Netherlands have greater flexibility to tailor sentences to individual circumstances, and there are no specific mandatory minimum sentences. As a result, the Dutch legal system focuses more on the rehabilitation of drug offenders rather than harsh punishment, especially for small-scale users and offenders.

3. Portugal

Portugal is known for its different approach to drug crime. The country has decriminalized the use and possession of drugs for personal use. In Portugal, possession of small amounts of drugs for personal consumption is not a criminal offense. Instead, individuals found in possession of small amounts of drugs are referred to a commission made up of health professionals and lawyers, and they may be recommended to undergo a rehabilitation program or seek medical treatment. However, drug trafficking is still considered a serious crime, and dealers can be subject to severe penalties, although there is no specific minimum sentence policy. Judges have wide discretion in sentencing.

4. Singapore

Singapore has one of the world's toughest drug policies, including the death penalty for some drug offences. Singapore has very strict minimum sentences for drug trafficking and smuggling. If someone is caught with a certain amount of drugs (e.g. 15 grams or more of heroin,

500 grams or more of marijuana), the death penalty can be imposed. This limits the judge's discretion. In many cases, the judge does not have the discretion to impose a sentence lower than the statutory minimum. Singapore's legal system emphasizes a strong deterrent effect through harsh punishments.

5. Australia

Australia has state-by-state drug laws, but generally takes a tougher approach to large-scale drug dealing. Some Australian states have specific minimum sentences for serious drug offences, particularly for large-scale dealing. However, for small-time dealers or users, a more flexible approach is used, often allowing judges to determine sentences based on individual circumstances. In keeping with the focus on rehabilitation, many Australian states also offer rehabilitation programs as an alternative to imprisonment, particularly for first-time offenders or users.

6. Malaysia

Like Singapore, Malaysia also has a very strict legal policy against narcotics. Malaysia applies very strict special minimum sentences for drug crimes, including the death penalty for large-scale drug dealers or smugglers. So that there is no room for sentencing below the special minimum. Judges in Malaysia have little to use their freedom in sentencing drug offenders, especially for dealers or smugglers.

Most countries with strict drug policies, such as the United States, Singapore, and Malaysia, apply specific minimum sentences for drug crimes, especially for large-scale distribution and smuggling. In these countries, judges' discretion in imposing criminal sentences is very limited, and harsh sentences are considered an effective way to curb drug crimes. In contrast, countries with a more flexible or rehabilitative approach, such as the Netherlands, Portugal, and some states in Australia, give judges more room to exercise their discretion, especially in dealing with minor offenders or drug users. This approach often focuses more on rehabilitation and reducing social impact than on harsh imprisonment.

In this regard, the drug law policies implemented reflect different legal and social philosophies, with some countries prioritizing prevention and eradication through harsh punishments, while others prefer a more humanistic approach with the aim of rehabilitation. The success of drug eradication is not only measured by how strict or lenient the punishments applied, but rather by the overall approach taken by a country, which includes law enforcement, rehabilitation programs, prevention, and social handling. However, when comparing countries that use judicial discretion in imposing criminal sentences versus those that apply strict special minimum sentences, the results vary depending on the social and economic context and the effectiveness of the implementation of the policy.

Countries such as Singapore, Malaysia, and some areas of the United States have implemented very strict minimum sentencing policies. Here are the results of drug eradication in these countries, in Singapore a very tough approach, including the death penalty, is considered effective in preventing drug crimes. The level of drug trafficking is relatively low, and severe punishment has created a significant deterrent effect. Although successful in reducing the number of drug crimes, this policy is often criticized for its lack of flexibility and inability to consider the role of individuals in the crime, such as small couriers or people who are forced to be involved. In addition, the large focus on criminal punishment is often ignored from a public health perspective, especially rehabilitation. In Malaysia, there is also a tough policy on drugs, including the death penalty. So this country has also succeeded in suppressing drug trafficking with a relatively low level of drug trafficking, especially for big dealers. Like Singapore, Malaysia has also faced international criticism for its death penalty policy. In addition, small dealers or drug users often receive the same harsh sentences as big dealers, without considering their situation and role in the crime. The United States' policy of special minimum sentences,

especially during the "War on Drugs" era in the 1980s, was initially considered successful in catching big dealers and suppressing drug trafficking. However, special minimum sentences in the US have resulted in mass incarceration and imprisoning many users and small dealers with very severe sentences. This is considered ineffective in the long term because it does not solve the root of the drug problem and instead creates other social problems, such as increasing the number of prisoners and injustice for minority groups.

Meanwhile, countries with a rehabilitation-based criminalization approach such as the Netherlands, Portugal, and some parts of Australia apply a more humanistic approach, by giving judges the freedom to assess the cases they handle by prioritizing the rehabilitation process. Portugal is considered one of the success stories in a more humane approach to narcotics. After decriminalizing possession of narcotics for personal use in 2001, Portugal experienced a significant decrease in overdose cases, drug-related HIV infections, and the number of drug users. The drug crime rate also decreased, and they managed to shift the focus from punishment to rehabilitation. Rehabilitation is the key to Portugal's successful policy, where drug users are directed to get medical and social help, rather than being immediately imprisoned. This approach also breaks the cycle of dependence and crime that often occurs in drug users. If the Netherlands' lax drug policy towards drugs for use, such as marijuana, has succeeded in creating an environment where hard drugs are better controlled. Although the sale of marijuana is legal in small amounts, the level of hard drug use in the Netherlands remains low compared to many other countries. The Netherlands has often been criticized for being too lax in its drug policies. However, the Dutch government argues that its policies help separate the soft and hard drug markets, and prevent users of soft drugs such as marijuana from entering hard drug networks.

Australia has taken a mixed approach, with some states using judicial discretion in dealing with small drug users and prioritizing rehabilitation. States that focus more on rehabilitation and supervision of drug users have seen lower drug crime rates and more controlled drug use. While some states have had success, the challenge remains in balancing tough enforcement of large dealers with a rehabilitative approach for small users.

From a long-term perspective, countries that are more flexible with the use of judicial discretion in sentencing and focus on rehabilitation tend to be more successful in reducing the negative social impacts of drugs. This policy allows them to address the root causes of drug addiction and prevent the cycle of crime from recurring. Meanwhile, countries with strong specific minimum sentences such as Singapore and Malaysia have also been successful in suppressing drug trafficking figures from data obtained, but this approach often has severe social consequences, including injustice, over-penalization, and a lack of focus on user rehabilitation. Factors Affecting Success. The success of eradicating narcotics does not only depend on criminal policy, but also on :

1. **Rehabilitation Programs** : Successful countries usually have strong rehabilitation programs for drug users.
2. **Prevention and Education** : Education about the dangers of narcotics and early prevention often play an important role in reducing usage rates.
3. **Consistency of Law Enforcement** : In countries with specific minimum penalties, consistent and effective law enforcement is key to ensuring a deterrent effect.
4. **Integrated Approach** : Successful countries often adopt an integrated approach, involving aspects of health, education, law enforcement, and rehabilitation simultaneously.

Countries with flexible sentencing policies and a focus on rehabilitation, such as Portugal, the Netherlands, and some states in Australia, tend to be more successful in reducing the negative impacts of drugs in the long term. Meanwhile, countries with strict minimum sentences such as Singapore and Malaysia have been successful in suppressing drug trafficking, but have faced criticism for not paying enough attention to the social aspects and rehabilitation of users. Ideally,

a balanced approach between strict law enforcement for big dealers and rehabilitation for small users would produce more effective and fair results in eradicating drugs.

Countries that implement a rehabilitative approach, such as Portugal, can be an inspiration in formulating a more holistic policy, where small-scale users or dealers are treated with a more humane approach without sacrificing legal certainty for major offenders. To ensure that the independence of judges through the imposition of sentences below the minimum specifically for small-scale drug dealers remains in line with the spirit of drug eradication, flexible but fair steps need to be taken. Small-scale dealers must be treated with a more humane approach and focus on rehabilitation, while major dealers continue to receive severe sentences that are in accordance with their role in the drug trafficking network. This recommendation is expected to create a legal system that does not only focus on punishment, but also on prevention and recovery, so that drug eradication can be more effective in the long term without sacrificing the principle of justice

CONCLUSION

Judicial discretion is needed to uphold the principles of substantive justice and proportionality in sentencing. Not all drug dealers have a significant role in the drug network. Small-scale dealers, who are often motivated by economic pressures or drug addiction, do not deserve the same severe punishment as big dealers or drug syndicates. The imposition of criminal sentences by judges allows for the application of sentences that are proportional to the perpetrator's guilt and role. The rigid application of special minimums can create injustice, especially for small-scale dealers who do not have much control over drug trafficking. Judges, through their decisions, can consider the specific conditions of each perpetrator and impose fairer sentences. Drug eradication must not only focus on severe punishment, but also on rehabilitation and prevention efforts. The use of lenient criminal sentences for small-scale offenders allows for an emphasis on rehabilitation rather than retribution, which can prevent perpetrators from being trapped deeper into the world of crime. This is in line with the long-term goal of reducing the demand for drugs and encouraging the reintegration of perpetrators into society. Some countries give judges the flexibility to impose sentences that are appropriate to the perpetrator's condition, including in drug cases. This more flexible approach has proven effective in some countries that prioritize rehabilitation, while countries with strict minimum sentencing policies often face prison overcrowding and low rehabilitation rates. Many small-time dealers are actually victims of socio-economic circumstances or drug addiction. Justice-based sentencing by judges provides space for the protection and rehabilitation of vulnerable offenders, rather than simply punishing them with harsh sentences that can worsen their conditions and increase the burden on the justice system.

In order for judges to impose sentences below the special minimum in line with the spirit of drug eradication, clear guidelines need to be applied. Judges must consider factors such as the level of involvement, motivation, and socio-economic background of the perpetrator. In addition, an emphasis is needed on rehabilitation programs that can prevent small perpetrators from re-involved in drug trafficking. Overall, sentencing by wise judges in cases of small dealers will create a balance between individual justice for the perpetrator and collective efforts in drug eradication, as well as maintaining the proportionality of punishment and the effectiveness of the justice system.

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