



Critical Juridical Analysis of the Criminal and Medical Boundaries in the Handling of Narcotics Addicts in Indonesia

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Abstract: *This study examines the proportionality of sentencing in narcotics cases involving intermediary offenders, with particular reference to Supreme Court Decision Number 1944 PK/Pid.Sus/2025. The research is grounded in the persistent issue of disproportionate penal practices, where individuals with minimal and non-decisive roles in drug distribution networks are frequently subjected to severe punishment. The objective of this study is to analyze how judicial reasoning reflects the principles of proportionality and individualization within the framework of Indonesia's narcotics law. A normative juridical method is employed, utilizing statutory and case-based approaches. The analysis focuses on Law Number 35 of 2009 on Narcotics, alongside a detailed examination of the Court's ratio decidendi in the selected decision. Legal materials are interpreted systematically to assess the alignment between formal legal provisions and their practical application in sentencing. The findings indicate that, while the Court maintains the legal classification of intermediary conduct as a criminal offense under narcotics law, it adopts a more nuanced approach in determining punishment. Specifically, the decision demonstrates a progressive application of sentencing principles by considering the offender's level of involvement, degree of culpability, and the quantity of narcotics involved. This reflects an effort to move beyond rigid formalism toward a more context-sensitive adjudication. In conclusion, the study affirms that a just penal policy requires not only the fulfillment of legal elements but also the incorporation of substantive*

justice and utilitarian considerations. Such an approach is essential to prevent overcriminalization and to promote a more balanced, rational, and humane development of Indonesia's narcotics penal system.

Keywords: *Penal Policy, Narcotics Crime, Intermediary Role, Individualization Of Punishment, Supreme Court Decision*

Introduction

The countermeasures against narcotics crimes constitute an integral part of the state's strategy to maintain public order and protect society from the serious threats arising from the circulation and abuse of narcotics. Narcotics crimes possess characteristics of concealed and systematic networks and often involve perpetrators with different levels of roles, thereby requiring a criminal law response that is planned, rational, and based on comprehensive policy considerations. In this context, penal policy is positioned as the primary instrument of the state in controlling crime through the implementation of criminal sanctions that are proportional, effective, and just. According to Hoefnagels and Marc Ancel, penal policy constitutes *the ultimate weapon of social control*, which must be applied selectively and responsibly in order to remain consistent with humanitarian values and the principles of the rule of law (Amin, 2020).

Law Number 35 of 2009 concerning Narcotics provides the juridical basis for the punishment of acts of offering, selling, or acting as an intermediary in the sale and purchase of narcotics without authorization, as regulated in Article 114 paragraph (1) in conjunction with Article 132 paragraph (1). However, in practice, these provisions are often applied uniformly to perpetrators who possess highly different roles and capacities, including those who merely act as couriers or intermediaries with small quantities of evidence. This condition raises a crucial question regarding the extent to which the application of such criminal law is consistent with modern theories of punishment that emphasize a balance between crime prevention and the protection of human rights. This issue indicates the need to reassess sentencing practices so that they remain aligned with the principle of individualization of punishment and the principle of justice that has developed within contemporary criminal law doctrine (Indonesia, 2009).

Penal policy, as part of criminal law politics, should be capable of evolving in accordance with the changing social and moral dynamics of society. Judges, as executors of judicial power, do not merely apply statutory provisions textually but are also obliged to explore substantive justice values as mandated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Consequently, sentencing cannot be separated from an analysis of the degree of culpability, motives, the perpetrator's social context, and the consequences of the act in order to prevent punishment from becoming merely an act of retaliation (*retributive justice*). This approach emphasizes that judges possess a strategic role in ensuring that the decisions they render reflect a balance between legal certainty and the sense of justice that lives within society (Hatta, 2022).

The transformation of national criminal law through Law Number 1 of 2023 concerning the Criminal Code introduces a new paradigm that regulates the purposes of punishment, sentencing guidelines, and alternatives to non-custodial sanctions within an integrated codification system. Article 622 paragraph (1) letter w and paragraph (15) affirm the continued applicability of criminal provisions contained in laws outside the Criminal Code insofar as they do not contradict the general principles of the new Criminal Code. This provision requires systemic harmonization between the Narcotics Law and the Criminal Code to prevent normative conflicts or inconsistencies in interpretation during the transitional period. Furthermore, Article 322 of the new Criminal Code demonstrates the integration of regulations concerning prohibited substances within a more comprehensive national codification structure, thereby requiring that the analysis of narcotics cases be placed within the broader framework of the reform of the national sentencing system (Sinambela et al., 2023).

The Supreme Court Decision Number 1944 PK/Pid.Sus/2025 represents an important manifestation of the implementation of penal policy oriented toward substantive justice. The Supreme Court corrected the prison sentence imposed on a perpetrator who merely acted as an intermediary in the sale and purchase of narcotics with a small quantity of evidence, as the previous punishment was considered not to reflect proportionality between culpability and sanction. The decision demonstrates that ideal sentencing must consider the role of the perpetrator within the structure of the criminal offense, rather than solely relying

on the severity of the statutory threat of punishment, thereby ensuring deeper substantive justice. This correction also affirms the judicial function as a controlling mechanism against potential disparities in sentencing practices within the judicial system (Mahkamah Agung Republik Indonesia, 2025).

Procedurally, the mechanism of judicial review (*peninjauan kembali*) within the Criminal Procedure Code provides a space for judicial correction of decisions containing judicial error or manifest mistakes. This authority is not merely technical in nature but reflects that the criminal justice system possesses internal oversight mechanisms capable of adapting the implementation of penal policy to fulfill the sense of justice within society. Therefore, the Supreme Court does not merely function as a court of law (*judex juris*), but also as a protector of the human rights of justice seekers within the national sentencing system. This corrective function strengthens the legitimacy of the judicial system in maintaining consistency and integrity in the application of criminal law (Ratna, 2022).

On the other hand, obstacles to the implementation of penal policy do not only originate from the substance of legislation, but also from the structure of law enforcement institutions and the legal culture of society. The orientation of some law enforcement officials who still measure the success of narcotics eradication based on the severity of the punishment imposed potentially places criminal sanctions as a repressive *primum remedium*, while neglecting the corrective and rehabilitative functions of criminal law. This situation indicates the need for a paradigm reform in the enforcement of narcotics law to avoid the adverse effects of excessive criminalization against perpetrators with minor roles. A more balanced approach is therefore required so that narcotics policy is not solely oriented toward punishment, but also toward the effectiveness of public policy and the protection of human rights (Bewley-Taylor & Tinasti, 2020).

Based on these conditions, a comprehensive evaluation is required to ensure that the implementation of penal policy genuinely supports the objective of protecting society without sacrificing the value of individual justice. Supreme Court Decision Number 1944 PK/Pid.Sus/2025 can serve as an important foundation in strengthening the direction of a more humane, consistent, and adaptive reform of penal policy toward the characteristics of perpetrators of narcotics crimes. Accordingly, this research is expected to bridge the gap between normative policy and empirical implementation in addressing narcotics crimes. The analysis of the implementation of penal policy in the decision is expected to provide both theoretical and practical contributions to the formulation of proportional sentencing guidelines oriented toward substantive justice and to support the effectiveness of the criminal justice system in addressing narcotics crimes in the future.

Methodology

This study constitutes a normative juridical or doctrinal legal research oriented toward the examination of positive legal norms, legal principles, and the construction of juridical arguments concerning the implementation of penal policy in narcotics crime cases. The approaches employed include the statutory approach, case approach, and conceptual approach, because the research does not merely examine statutory texts but also analyzes

the legal considerations contained in the Supreme Court Decision Number 1944 PK/Pid.Sus/2025 and examines the concepts of proportionality and substantive justice within modern sentencing theory. The combination of these three approaches enables a comprehensive analysis that bridges the normative dimension and the applicative dimension in judicial practice. With a doctrinal orientation, this research places legal argumentation as the primary instrument for assessing the consistency and rationality of penal policy within the national criminal law system.

The statutory approach provides crucial benefits in legal research because it allows researchers to examine the foundation of legality and the hierarchical consistency of a legal issue in depth. By analyzing positive law, this approach assists in identifying whether there exists a vacuum of norms, a conflict of norms, or vagueness of meaning within a regulation. Furthermore, this approach ensures that the analytical results possess a strong juridical foundation, are systematic and objective, thereby ensuring that the proposed solutions remain grounded in the existing legal framework and universally recognized legal principles (Karo Karo, 2025; Karo Karo, 2022; Karo Karo & Prasetyo, 2025; Widarto, Santiago, & Darwati, 2025; Rahmat et al., 2024). Consequently, the resulting analysis is not speculative in nature but rather based on a normative construction that can be academically and practically justified.

The statutory approach is conducted by systematically examining the provisions contained in Law Number 35 of 2009 concerning Narcotics, particularly Article 114 paragraph (1) in conjunction with Article 132 paragraph (1), and relating them to the transitional provisions contained in Law Number 1 of 2023 concerning the Criminal Code, particularly Article 622 paragraph (1) letter w and paragraph (15), which regulate the applicability of criminal norms outside the Criminal Code. In addition, this research also examines Article 322 of the new Criminal Code as well as provisions regarding the objectives and guidelines of sentencing, including Articles 79 to 82, which are associated with the principles of proportionality and restorative justice approaches. The case approach is conducted by analyzing the ratio decidendi, legal considerations, and judicial corrections made by the Supreme Court through the judicial review mechanism in order to assess the consistency of law enforcement with the principles of individualization of punishment and national penal policy. This analysis is directed at examining the relationship between written legal norms and their application in concrete criminal justice practices.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials obtained through systematic and structured library research. Primary legal materials include relevant legislation, namely Law Number 35 of 2009 concerning Narcotics, Law Number 1 of 2023 concerning the Criminal Code, Law Number 48 of 2009 concerning Judicial Power, and the Indonesian Criminal Procedure Code (KUHAP), including the official document of Supreme Court Decision Number 1944 PK/Pid.Sus/2025 as the main object of analysis. Secondary legal materials include scholarly literature, accredited journal articles, expert opinions in the field of penal policy and sentencing theory such as Barda Nawawi Arief, Hoefnagels, and Marc Ancel, as well as studies concerning the principles of proportionality and the individualization of punishment in modern criminal law systems.

Tertiary legal materials in the form of legal dictionaries, legal encyclopedias, and regulatory indexes are utilized to clarify conceptual definitions and to ensure the consistency of terminology used in the research. All legal materials are inventoried, classified based on normative and thematic relevance, and subsequently analyzed using grammatical, systematic, and teleological interpretation techniques to construct coherent legal arguments.

The data analysis technique is conducted through a descriptive-qualitative method emphasizing legal reasoning and the construction of normative arguments regarding the conformity of the application of Article 114 of the Narcotics Law in the examined decision. The analysis begins with identifying the elements of the offense, the structure of the offender's role, and the aggravating and mitigating considerations as formulated by the *judex facti* and corrected by the *judex juris*. Subsequently, an evaluation is conducted regarding the alignment of the decision with the principles of sentencing objectives, the principle of proportionality, and the sentencing guidelines within the new Criminal Code, including the implications of Article 622 and Article 322 toward the harmonization of legal norms. This research also assesses the role of the Supreme Court as *judex juris* in maintaining the uniformity of legal interpretation through the judicial review mechanism, which functions as a control against potential judicial oversight or manifest errors in the application of law. Ultimately, this research aims to produce a comprehensive analysis concerning the consistency of penal policy implementation toward offenders with minimal roles in narcotics crimes, while also providing theoretical and practical contributions to the development of sentencing guidelines that are more oriented toward substantive justice within the national criminal law system.

Result and Discussion

Implementation of Penal Policy in the Imposition of Criminal Sanctions Against Perpetrators Acting as Intermediaries in the Sale and Purchase of Narcotics Based on the Supreme Court Decision Number 1944 PK/Pid.Sus/2025

1. Juridical Qualification of the Act as the Criminal Offense of Acting as an Intermediary in the Sale and Purchase of Narcotics

The Supreme Court Decision Number 1944 PK/Pid.Sus/2025 qualifies the act of ASEP SARIPUDIN alias IFANK bin EDI SUKRIADI as a criminal conspiracy carried out without authority to act as an intermediary in the sale and purchase of Group I non-plant Narcotics as stipulated in Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, based on the assessment of the Convict's active role in ordering, repackaging, and preparing the delivery of methamphetamine to another party. The proven legal facts show that on 7 May 2023 the Convict was arrested with evidence of 0.31 grams of methamphetamine (0.27 grams after laboratory testing by the National Agency of Drug and Food Control which confirmed the presence of methamphetamine as a Group I Narcotic), one Samsung J2 mobile phone, and one Honda Scoopy motorcycle, all of which had a functional relationship with the criminal event.

Communication with a wanted person (DPO) named "Abang" as well as the

transaction for purchasing methamphetamine worth IDR 500,000 which was later increased by IDR 150,000 confirms the existence of a distribution dimension rather than mere personal consumption, thereby cumulatively fulfilling the elements of *actus reus* and *mens rea* in the offense of narcotics trafficking. Accordingly, the Court maintained the construction that an intermediary constitutes an integral part of the illicit trafficking network which, from a criminological perspective, is categorized as a serious crime because it threatens public legal interests in the form of health and social order. This approach demonstrates consistency in the application of repressive norms within the narcotics regime which considers every link in the distribution chain as a subject of full criminal liability, regardless of the quantitative scale of the evidence.

Such qualification simultaneously affirms that Group I Narcotics, which under Article 6 paragraph (1) letter a of Law Number 35 of 2009 possess a very high potential for dependency and are prohibited for use in health services except for scientific purposes, are placed within the strictest regulatory regime, so that any form of unauthorized distribution is treated as a serious threat to the public protection system. Within the framework of national criminal law, the offense construction of Article 114 paragraph (1) possesses a formal-material character because it does not require the occurrence of a concrete consequence, but merely proof of the act of acting as an intermediary in a narcotics transaction, thereby making proof of the role central in determining the qualification of the criminal offense. The Supreme Court, in its capacity as *judex juris*, did not annul the offense construction established by the *judex facti*, but affirmed that the element of criminal conspiracy had been fulfilled through the existence of agreement and coordination with other parties in the distribution chain. Thus, from the perspective of criminal law dogmatics, the act of the Convict fulfills the objective element in the form of a distribution activity and the subjective element in the form of intentional conduct without authority, so that criminal liability remains juridically valid. This analysis shows that the implementation of penal policy continues to maintain the paradigm of eradicating illicit trafficking as a primary priority within Indonesia's narcotics legal policy.

The Supreme Court implicitly opened space for progressive interpretation aligned with the development of the New Criminal Code through Law Number 1 of 2023, particularly Article 322 which regulates sentencing principles based on objectives and balance between the protection of society and the rehabilitation of offenders, so that juridical qualification does not automatically determine the severity of punishment without considering the concrete degree of culpability. This relevance becomes even more important when linked to Article 622 paragraph (1) letter w and paragraph (15) of Law Number 1 of 2023 which regulate transitional provisions and adjustments regarding special crimes, including narcotics, so that the synchronization of norms becomes part of a systemic interpretation in sentencing. In the context of amendments to criminal provisions through Law Number 1 of 2026 which adjusts the penalties under Article 114 paragraph (1) and paragraph (2) of Law Number 35 of 2009, the direction of legislative policy demonstrates a tendency toward rationalizing criminal sanctions so that they do not always produce maximum punishment against perpetrators with marginal roles (Buxton, 2020). Therefore,

the qualification of intermediary remains normatively valid, but the weight of punishment must be interpreted within the framework of a national criminal law system that is moving toward proportionality and individualization (Rachim & Munandar, 2023). Accordingly, the legal subject continues to be positioned as a participant in narcotics trafficking, yet the evaluation of sentencing is no longer mechanistic but contextual and integrated with the most recent legislative developments.

2. The Supreme Court's Consideration in Assessing the Element of Fault and the Degree of Criminal Responsibility

In granting the judicial review, the Supreme Court emphasized that although the elements of Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) had been fulfilled, there existed a manifest error of the *judex facti* in assessing the proportionality of punishment and the degree of the Convict's culpability, particularly because the sentence of six years' imprisonment did not reflect the concrete role of a small-scale involvement with evidence of only 0.31 grams of methamphetamine. The Court considered that the Convict did not function as a controller of the network, did not obtain significant profit, and was not proven to be a principal actor within an organized distribution system, so that the level of culpability could not be equated with that of a drug lord or major distributor. Consequently, the analysis of culpability was not merely based on the fulfillment of the elements of the offense, but also on the quality of participation in the criminal act, which in the theory of criminal responsibility is recognized as differentiation of roles based on factual contribution to the occurrence of the crime. This approach shows that the Court did not merely examine the formal aspect of legality but also evaluated the substantive justice of sentencing. Such correction reaffirms the function of the Supreme Court as *judex juris* authorized to assess the application of law and the conformity of legal reasoning with the principles of justice (Subagiyo, Lestari, & Wijayati, 2025).

Within the framework of modern penal policy, this consideration reflects the application of the principle of individualization of punishment as accommodated in the New Criminal Code through Law Number 1 of 2023, particularly Articles 51 and 54 which emphasize that the purpose of punishment is not solely retribution but also rehabilitation and social reintegration, so that the severity of punishment must consider the personal circumstances of the offender and the social impact of the act. Although this case remains within the regime of Law Number 35 of 2009, the interpretation of the Supreme Court has moved toward harmonizing values with the new national sentencing system, including the principle of balance between legal certainty and utility. This is also relevant to Article 622 of Law Number 1 of 2023 which opens space for the synchronization of special criminal provisions with the national Criminal Code system, thereby requiring the application of sanctions to be interpreted from a systemic perspective. Accordingly, the correction of the six-year sentence to three years does not represent a weakening of repressive policy but rather a rationalization of the application of minimum penalties that are excessively severe for offenders with limited roles. This analysis demonstrates that the Court applied an

evaluative approach to individual culpability without altering the offense construction that had been proven (Tarigan, 2017).

When associated with Law Number 20 of 2025 which regulates the mechanism of restorative justice under Articles 79 to 82 of the New Criminal Code, this decision conceptually moves toward limiting unnecessary punishment for perpetrators with marginal roles, even though narcotics offenses remain categorized as serious crimes that generally do not meet the criteria for restorative settlement. The Court did not explicitly apply restorative justice, but it demonstrated a spirit of proportionality and correction against over-penalization consistent with the principle of *ultimum remedium* in modern criminal law. Thus, although the narcotics system is inherently repressive, there exists space for progressive interpretation that avoids generalizing culpability and ensures that sanctions are imposed according to the level of the offender's contribution to the crime. This approach strengthens the legitimacy of the decision while simultaneously demonstrating the adaptation of judicial practice to a more humanistic sentencing paradigm. Therefore, the role of the Supreme Court is not only as a guardian of formal legality but also as a protector of the balance between legal norms and the sense of justice in criminal justice practice.

3. Application of the Principle of Proportionality in Sentencing

In Decision Number 1944 PK/Pid.Sus/2025, the Supreme Court applied the principle of proportionality as the basis for correcting the six-year imprisonment previously imposed by the Pangkalpinang District Court, concluding that such punishment was disproportionate to the concrete level of culpability of ASEP SARIPUDIN alias IFANK bin EDI SUKRIADI who was only involved in small-scale distribution with evidence of 0.31 grams of methamphetamine. The reduction of the sentence to three years' imprisonment while maintaining the fine of IDR 1,000,000,000 subsidiary to three months' imprisonment demonstrates that the Court did not eliminate the repressive character of narcotics policy but rather adjusted the intensity of the sanction to the offender's factual contribution within the structure of the crime. From the perspective of sentencing theory, proportionality requires a rational relationship between the level of culpability (*schuld*) and the suffering imposed through punishment, so that sanctions must not exceed the degree of the offender's culpability. The Court assessed that the Convict was not a network controller, did not gain significant economic benefit, and was not proven to be a principal distributor, so that the application of a high minimum penalty without differentiation of roles could potentially produce excessive punishment. Thus, this correction reflects the application of the principle of balance between the protection of society and individual justice which constitutes the foundation of modern sentencing systems (Kurniawan et al., 2025).

This approach represents a shift in the implementation of penal policy from a model of retributive severity toward a model of measured punishment. The Court did not deny the dangers posed by narcotics but rejected excessive punishment that lacks direct correlation with the offender's concrete culpability. Accordingly, this decision may be regarded as an attempt to balance the objectives of general deterrence and individual justice. Within the context of national narcotics policy, such an approach is important to prevent

overcriminalization of actors occupying marginal roles within trafficking networks (Rifai, Haryono, & Wiryadi, 2024).

Although narcotics offenses generally do not fall within the category that may be resolved through restorative mechanisms due to their impact on broader public interests, the spirit of limiting unnecessary punishment remains relevant when assessing offenders with low degrees of participation. Article 79 regulates the general principle of restorative justice emphasizing the restoration of harm and the balance of interests among victims, offenders, and society; Article 80 determines the objective and subjective requirements that must be fulfilled for a case to be diverted to restorative mechanisms; Article 81 regulates the procedures for implementing restorative agreements under the supervision of law enforcement authorities; and Article 82 confirms the legal consequences of the success or failure of the restorative process for the continuation of prosecution. Although narcotics trafficking offenses do not automatically satisfy the criteria of Article 80 because they are categorized as serious crimes, the principle of differentiating criminal responses to offenders with low culpability remains normatively relevant in interpreting proportionality. In this case, the Supreme Court did not apply restorative mechanisms, yet the substance of its considerations demonstrates caution to ensure that sentencing is not absolute and uniform for all offenders without distinguishing their factual positions. Therefore, the application of proportionality in this decision may be viewed as a concrete manifestation of integrating the values of the New Criminal Code into narcotics judicial practice before the system becomes fully effective.

4. Implementation of Penal Policy Regarding Evidence and Assets Related to Criminal Offenses

In the ruling on the judicial review, the Supreme Court clearly distinguished between evidence that had a direct relationship with the criminal offense and items used only incidentally, so that the policy of confiscation was not applied automatically but through strict causal analysis. Evidence in the form of methamphetamine, a cigarette box, and cigarette paper was ordered to be destroyed because they constituted the direct objects of the criminal offense, while the Samsung J2 mobile phone was confiscated for the state because it was proven to have been used as a communication tool in transactions with the supplier and the wanted person (DPO). Conversely, the Honda Scoopy motorcycle which had previously been confiscated by the *judex facti* was returned to the Convict because it was not proven to have been obtained from the proceeds of crime and was not specifically prepared as an instrument for narcotics trafficking. This consideration shows that the Court applied the principle of *nexus* or a clear causal relationship between the property and the criminal act before imposing confiscation. Accordingly, penal policy toward assets was not treated merely as an additional repressive punishment but as an instrument that must satisfy standards of rationality and legality (Efendi & Handoko, 2024).

This approach is consistent with the principle of protection of property rights guaranteed within the national legal system as well as with the provisions of the New Criminal Code which emphasize that additional penalties must be imposed based on direct

relevance to the criminal offense and must not exceed the limits of law enforcement interests. Within the framework of Law Number 1 of 2023, sentencing orientation no longer focuses solely on punishment but also on balance between state interests and individual rights, so that asset confiscation must consider proportionality and direct connection with the criminal act. The relevance of Article 622 of Law Number 1 of 2023 again appears in the context of harmonizing special crimes with general Criminal Code principles, so that confiscation practices in narcotics cases must not deviate from the principles of legality and legal certainty. Furthermore, an examination of amendments to criminal provisions through Law Number 1 of 2026 indicates that legislative policy also encourages rationalization of additional sanctions so that they do not expand suffering beyond the scope of concrete culpability. Therefore, the decision to return the motorcycle to the Convict reflects the implementation of a selective and evidence-based penal policy.

From the perspective of the role of the Supreme Court as *judex juris*, the correction of the confiscation of the motorcycle demonstrates its supervisory function over the application of law by the *judex facti* to prevent the expansion of sanctions not supported by sufficient legal basis and facts. The Court did not freely reassess facts but evaluated whether the application of confiscation norms had complied with the principles of legality, proportionality, and adequate causal connection between property and the criminal offense. This approach strengthens the Court's position as guardian of consistent legal application and guarantor of substantive justice within the criminal justice system. In the context of a national narcotics policy that tends to be repressive, such judicial control is essential to prevent practices of over-penalization that may undermine the legitimacy of the legal system. Therefore, the implementation of penal policy regarding evidence in this decision not only resolves the concrete case but also provides a normative precedent concerning the rational limits of asset confiscation in narcotics offenses.

The Direction of Ideal Penal Policy Reform to Realize Proportional and Just Sentencing in Combating Narcotics Crimes

1. Reconstruction of the Penal Approach to the Role of Offenders in the Narcotics Distribution Chain

The reconstruction of an ideal penal policy must be based on an evidence-based sentencing framework, namely a system that explicitly differentiates the level of the offender's role within the narcotics distribution network through objective indicators such as network control, economic gain, frequency of transactions, and the quantity of evidence, so that punishment can be rationally calibrated according to the offender's actual contribution to the crime. This approach is necessary because the norm of Article 114 of the Narcotics Law has thus far unified various functional roles within a single general criminal threat without providing clear differentiation guidelines for judges, thereby potentially creating sentencing disparities and legal uncertainty in judicial practice.

According to studies on penal policy, the role-based sentencing model has been regarded as one of the effective mechanisms of criminal law reform in addressing structurally complex narcotics crimes, as it enables the focus of aggravated sanctions on

strategic actors while providing alternative non-custodial handling for offenders with marginal roles. Furthermore, this design is also consistent with side effects identified in law enforcement practices, in which courts occasionally impose sanctions below the minimum when the offender's role is less significant, even though the norm requires a specific minimum, because judges recognize the imbalance between the normative threat and the factual context of the defendant's actions. Empirical research suggests that a sentencing framework integrating these role variables not only strengthens the legitimacy of judicial decisions but also maximizes the inhibitory impact on core actors within the distribution network while minimizing the criminogenic effects of mass incarceration of peripheral offenders without significant influence on the overall narcotics supply.

Such reconstruction must also consider the development of norms in the new Criminal Code through Law Number 1 of 2023 concerning the Criminal Code (effective January 2, 2026), which revokes most narcotics criminal provisions from the Narcotics Law and transfers them into the national Criminal Code so that the structure of criminal sanctions becomes a more coherent normative unity within the general criminal law system. This change opens space for the establishment of integrated sentencing guidelines that can synchronize narcotics provisions with general criminal principles as stipulated in Article 322 of the New Criminal Code, which emphasizes the rationality of punishment based on the objectives of sentencing and the social conditions of the offender.

This approach requires systematic integration between narcotics law and the general principles of the Criminal Code in order to avoid normative gaps or juridical overlaps, while also enabling judges to implement penal policies that are aligned with the national criminal justice system as a whole. Within this reform, the legislative body needs to formulate specific provisions regulating the classification of offenders' roles as one of the objective factors in sentencing, so that judges possess clear and consistent parameters in determining the severity of punishment. Such a framework will enhance the predictability of decisions, minimize disparities, and integrate repressive and preventive objectives in the context of narcotics distribution, thereby demonstrating that the reform of penal policy is not merely a revision of normative texts but rather a reconstruction of the architecture of narcotics sentencing that is holistic and adaptive to the multilevel characteristics of criminal networks (Gunawan, Soesilo, & Dewi, 2024).

2. The Principle of Individualization and Proportionality in the Narcotics Sentencing System

Strengthening the principles of individualization and proportionality within the narcotics sentencing system must be positioned as a normative foundation in the reform of penal policy, so that the imposition of punishment does not merely refer to absolute minimum threats but also considers personal characteristics, motives, social impact, and the offender's potential for resocialization. In modern sentencing theory, a just punishment is not the harshest punishment, but rather the punishment that is most appropriate for the purposes of prevention, reintegration, and the protection of society while simultaneously respecting human dignity as a subject of law. This means that judges should possess measured discretionary space to adjust the severity of punishment based on the individual

context of each convicted offender, rather than merely referring to the “maximum threat,” which is often rigid and formalistic.

Academic criticism of the implementation of special minimum sanctions within narcotics legislation indicates that such provisions may restrict judges’ capacity to comprehensively consider the offender’s personal factors, thereby frequently resulting in decisions below the minimum or the use of less directed non-judicial considerations. An ideal reform of penal policy should therefore explicitly incorporate parameters of individualization within the normative framework, so that not only general provisions of the Criminal Code such as Article 322 regarding the principle of proportionality are used as references, but also specific guidelines on how the offender’s background, psychological condition, and potential for social reintegration should be assessed in narcotics sentencing.

Strengthening the principle of proportionality must also be linked to the development of an operational sentencing framework, including categories of punishment and transparent evaluative criteria, so that judges possess clear guidelines to measure the weight of culpability and social impact in a measurable manner. This approach will improve consistency among judicial decisions, reduce disparities, and reinforce the legitimacy of the criminal justice system in the eyes of the public, which ultimately contributes to the effectiveness of narcotics control as a whole. The principle of individualization also plays an important role in regulating new roles within the criminal justice system, such as restorative justice and alternative non-custodial sanctions that are currently promoted within the reform of the Criminal Code, thereby ensuring that reformed penal policy does not merely punish but also facilitates the social recovery of offenders and the prevention of recidivism. Consequently, the reform of narcotics sentencing must integrate the dimensions of retributive and rehabilitative justice in a balanced manner so that the legal system does not lose its humanitarian orientation (Haqni, Safa Putri, & Ghasani, 2025).

3. Harmonization of Penal Policy and the Objectives of Human Rights Protection

Penal policy concerning narcotics crimes must be aligned with human rights (HR) principles, because criminal punishment particularly harsh and comprehensive imprisonment without considering the offender’s profile may violate fundamental rights such as the right to personal liberty and the right to humane treatment in criminal law enforcement. According to scientific studies on narcotics law enforcement from a human rights perspective, the identification and protection of the rights of narcotics users and abusers as legal subjects possessing fundamental rights are often insufficiently prioritized, whereas repressive approaches tend to position them merely as objects of social control without considering their rights to rehabilitation or necessary medical treatment.

These rights are enshrined in Article 28I paragraph (1) of the 1945 Constitution, which affirms that the state is obligated to protect, promote, uphold, and fulfill human rights; therefore, criminal responses must not simply disregard these rights as part of the state’s constitutional obligations. If penal policy is perceived as prioritizing deterrence through lengthy imprisonment without considering the social context and the offender’s recovery needs, the legitimacy of the criminal justice system as an instrument of substantive

justice will weaken because it may violate human dignity and the principle of fair legal protection.

Nevertheless, the harmonization between human rights and penal policy also encounters dilemmas, for instance regarding severe punishments for major traffickers, including the concept of the death penalty for large-scale cases, which is frequently criticized for contradicting the right to life as one of the most fundamental human rights. In this context, policy reform must emphasize that respect for human rights does not mean weakening narcotics eradication efforts but rather strengthening approaches that are accountable, proportional, and based on social evidence so that policy becomes not merely repressive but also rational. This recognition is important because the excessive dominance of a retributive orientation without considering the rights of offenders often leads to declining legitimacy of the system and obstacles to effective and fair law enforcement, particularly when confronting the reality of illicit narcotics markets targeting millions of citizens (detikcom, 2024).

4. Supreme Court Decisions as Precedents for Penal Policy Reform

In the context of Criminal Code reform through Law No. 1 of 2023, there has been a major shift from a retributive criminal model toward a model that is more inclusive of the values of restorative justice and rehabilitation, thus making this Supreme Court decision consistent with the spirit of such transformation. The New Criminal Code explicitly incorporates the principle of restorative justice within the objectives of sentencing, emphasizing social recovery, reintegration, and respect for human dignity while simultaneously limiting mandatory imprisonment for certain criminal offenses. An interpretative model that is sensitive to the weight of culpability and the factual context of the offender represents an early manifestation of the integration of these values within judicial practice, demonstrating that judicial decisions must not be mechanistic but rather responsive to social dynamics and normative developments.

This decision also opens opportunities for the development of more comprehensive sentencing guidelines, which normatively may be used by judges at all levels of the judiciary to ensure that the punishment imposed aligns with the objectives of the national criminal justice system in accordance with the increasingly recognized principles of restorative justice and human rights. By becoming a precedent for more progressive interpretation, the Court also contributes to the development of criminal law policy that does not merely emphasize the threat of punishment but also considers the objectives of reintegration and the prevention of recidivism more effectively. Ultimately, this precedent can serve as a starting point for formulating narcotics sentencing guidelines that are not only strict toward offenders with strategic roles but also fair and humane toward offenders with marginal roles, thereby enabling the sentencing system to achieve a balance between the objectives of narcotics control and respect for human rights without sacrificing the effectiveness of law enforcement (Kurniawan, Joharsyah, & Sahbudi, 2025).

Conclusion

The findings of this study demonstrate that the implementation of penal policy in addressing intermediary offenses within narcotics transactions, as reflected in Supreme Court Decision Number 1944 PK/Pid.Sus/2025, signifies a paradigmatic shift from a rigid, offense-based sentencing model toward a more nuanced, role-oriented approach that prioritizes the principles of individualization and proportionality. Sentencing is no longer uniformly imposed based solely on the formulation of Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009, but instead incorporates a substantive evaluation of the offender's role, degree of participation, and level of control within the narcotics distribution network. The reduction of the sentence from six to three years illustrates a corrective response to overcriminalization tendencies arising from the mechanistic application of special minimum penalties, while simultaneously preserving the deterrent and general preventive functions of criminal law. This reasoning is further aligned with the reform architecture under Law Number 1 of 2023, particularly Article 622 paragraph (1) letter w and paragraph (15), as well as the transitional framework toward Law Number 1 of 2026, which collectively emphasize the harmonization of criminal provisions and the rationalization of sanctions within the national sentencing system. In this context, the Supreme Court, acting as *judex juris*, not only ensures normative accuracy but also reinforces coherence between sectoral legislation and broader criminal law policy through progressive interpretation that integrates legal certainty, human rights protection, and the effectiveness of narcotics control. The decision thus constitutes a significant precedent in advancing a more proportional, integrated, and substantively just sentencing regime in Indonesia. Practically, these findings underscore the urgency for the Supreme Court to formulate Special Sentencing Guidelines for Narcotics Crimes potentially through a Supreme Court Regulation or Circular Letter based on a role-based sentencing framework supported by both quantitative and qualitative assessment matrices, including variables such as control, economic benefit, network structure, frequency of involvement, and coercion. Such guidelines should be harmonized with Law Number 1 of 2023 to ensure consistency within the national sentencing system and to limit excessive punishment. Furthermore, penal reform should be integrated with non-penal strategies within an integrated criminal justice policy, positioning imprisonment as *ultimum remedium* for minor intermediaries, alongside the development of alternative measures such as social work sanctions, electronic monitoring, vocational rehabilitation, post-release supervision, and proportional asset confiscation mechanisms. For future research, it is recommended to empirically examine the effectiveness of role-based sentencing guidelines and non-custodial sanctions in reducing recidivism and prison overcrowding, as well as to explore comparative approaches across jurisdictions in order to strengthen evidence-based criminal law reform and enhance the long-term legitimacy and efficacy of narcotics law enforcement.

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