



Legitimacy of Sub-Minimum Sentencing in Narcotics Cases: An Analysis of Judicial Discretion from the Perspectives of Positive Law and Islamic Criminal Law

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ABSTRACT

This article examines the legitimacy of sub-minimum sentencing in narcotics cases through a normative analysis of Indonesian Supreme Court Decision No. 4634 K/Pid.Sus/2023, which imposed a sentence below the statutory minimum under Article 112 of Law No. 35 of 2009. While scholarship has widely discussed judicial discretion and proportionality, limited attention has been given to the tension between mandatory minimum regimes and religious-based penal rationality in Indonesia's plural legal system. Using doctrinal legal analysis and a reconstruction of judicial reasoning at the District Court, High Court, and Supreme Court levels, this study finds that, from the perspective of positive law, the decision is normatively problematic because it lacks a clear legal basis for departing from mandatory minimum sentencing, thereby weakening legality and legal certainty. Conversely, from the perspective of Islamic criminal law, the ruling gains substantive legitimacy within the framework of ta'zīr and maqāṣid al-sharī'ah, particularly the protection of intellect (ḥifz al-'aql), which prioritizes proportionality and rehabilitation for drug users. However, this legitimacy remains procedurally fragile due to the absence of objective medical assessment. The article proposes an integrative accountability model consisting of a minimum evidentiary checklist and mandatory clinical assessment to reconcile judicial discretion with legal certainty and Islamic normative principles

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1. Introduction

The circulation and abuse of narcotics constitute a persistent and structurally embedded legal and public health challenge in Indonesia. Official data from the National Narcotics Board (BNN) indicate that in the most recent reporting period approximately 9,348 narcotics cases were handled nationwide, involving 12,137 suspects, with the total value of seized criminal assets reaching approximately IDR 1.12 trillion.¹ Longitudinal data further reveal a sharp increase in case handling from 2013, culminating in a peak in 2018, followed by fluctuating trends and a relative decline in 2024.² This pattern reflects not only the dynamics of narcotics circulation but also the expanding intensity and structural burden of law enforcement interventions within the criminal justice system.

Normatively, Indonesia's narcotics regime is governed by Law No. 35 of 2009, which adopts a differentiated regulatory design by distinguishing between possession and distribution, subject to severe criminal sanctions and personal use, which allows for rehabilitative measures.³ This framework is intended to balance deterrence with therapeutic and protective objectives. In practice, however, the growing volume and complexity of narcotics cases have generated recurring tensions, particularly where courts impose sentences below the statutory minimum explicitly prescribed by law.⁴ Such practices raise fundamental questions regarding the coherence of sentencing policy, the boundaries of judicial discretion, and the sustainability of mandatory minimum sentencing in high-volume criminal adjudication.

One of the most salient illustrations of this tension is Supreme Court Decision No. 4634 K/Pid.Sus/2023, which concerned the possession of approximately 0.18 grams of methamphetamine.⁵ At first instance, the district court imposed a sentence below the four-year statutory minimum stipulated in Article 112(1) of the Narcotics Law, a decision subsequently upheld on appeal.⁶ On cassation, however, the Supreme Court modified the lower court judgments and imposed a sentence of one year and six months' imprisonment

¹ "Data Statistik Penanganan Kasus Narkotika BNN," *Https://Puslitdatin.Bnn.Go.Id*, 2026, <https://puslitdatin.bnn.go.id/portfolio/data-statistik-kasus-narkotika/>.

² "Data Statistik Penanganan Kasus Narkotika BNN."

³ Farid Iskandar, "Pelaksanaan Pertanggungjawaban Penyalahgunaan Narkotika," *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 2 (2021): 96–116, <https://doi.org/10.18196/jphk.v2i2.9989>.

⁴ A W Laksana et al., "The Disparities in Punishment for Narcotic Addiction: Does It Reflect the Value of Justice?," *Jurnal Media Hukum* 32, no. 1 (2025): 134–50, <https://doi.org/10.18196/jmh.v32i1.25678>.

⁵ Ahmad Dzulkifli Rahmatullah and Muhamad Hasan Sebyar, "Analisis Yuridis Putusan Kasasi Dibawah Ancaman Minimal Dalam UU Narkotika," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 1, no. 3 (2024): 170–85, <https://doi.org/https://doi.org/10.62383/demokrasi.v1i3.266>.

⁶ Mahkamah Agung RI, "Putusan Nomor :595/PID.SUD/2023/PT SBY," *Direktori Putusan Mahkamah Agung Republik Indonesia*, 2023.

accompanied by a fine of IDR 800,000,000.⁷ The sentence reduction was justified by the relatively small quantity of narcotics and the assumption that the substance was intended for personal consumption. Notably, the Court did not articulate a clear and identifiable normative basis authorizing deviation from the mandatory minimum sentencing regime.

This decision raises a fundamental juridical problem within Indonesian criminal law. From the perspective of positive law, sentencing below the statutory minimum in the absence of a verifiable legal justification risks undermining the principle of legality (*nulla poena sine lege*), eroding legal certainty, and amplifying sentencing disparity across comparable cases.⁸ Although Supreme Court Circular Letter No. 4 of 2010 allows for a rehabilitative approach in narcotics cases, its application is conditioned upon objective evidentiary requirements, including integrated assessments, medical or clinical recommendations, and the absence of indicators of drug trafficking. Where these evidentiary prerequisites are not adequately documented, the legitimacy of judicial discretion becomes difficult to defend within a mandatory minimum sentencing framework.

Empirical studies on judicial decision-making in narcotics sentencing further demonstrate that discretionary practices frequently shape sentencing outcomes beyond formal statutory prescriptions, highlighting the complex interplay between legal norms and judicial reasoning in drug adjudication.⁹ This international evidence reinforces the relevance of examining how judicial discretion operates within Indonesia's mandatory minimum sentencing regime and its implications for consistency, proportionality, and legal certainty.

The case also exposes a structural challenge in narcotics adjudication, namely the difficulty of distinguishing between users and traffickers solely on the basis of the quantity of seized substances. A legally sound determination requires a holistic assessment that extends beyond quantitative thresholds to include indicators such as packaging patterns, the presence of transactional instruments, modes of possession, and medical or psychiatric evaluations of dependency. Consequently, a vertical analysis of judicial reasoning across

⁷ The decision of the Situbondo District Court applying Article 112(1) in conjunction with Article 132(1) of Law No. 35 of 2009 was upheld by the Surabaya High Court in Decision No. 595/Pid.Sus/2023/PT SBY. At the cassation level, the Supreme Court, in Decision No. 4634 K/Pid.Sus/2023, amended the operative ruling by imposing a sentence of one year and six months' imprisonment and a fine of IDR 800,000,000 (subsidiarily two months' confinement).

⁸ Marcello Hanif, Pujiyono, and Rahmi dwi Sutanti, "ANALISIS HUKUM PENJATUHAN PIDANA DIBAWAH MINIMUM KHUSUS TERHADAP PELAKU TINDAK PIDANA NARKOTIKA (STUDI KASUS PUTUSAN NO. 13/PID.SUS/2022/PNKDS)," *Diponegoro Law Journal* 14, no. 3 (2025): 1–8; Hafrida, "Kebijakan Hukum Pidana Terhadap Pengguna Narko Ka Sebagai Korban Bukan Pelaku Tindak Pidana : Studi Lapangan Daerah Jambi," *Padjadjaran Jurnal Ilmu Hukum* 3, no. 1 (2016): 173–91.

⁹ Cecep Mustafa, Margaret Malloch, and Niall Hamilton Smith, "Judicial Perspectives on the Sentencing of Minor Drug Offenders in Indonesia : Discretionary Practice and Compassionate Approaches," *Crime, Law and Social Change* 74 (2020): 297–313, <https://doi.org/https://doi.org/10.1007/s10611-020-09896-0>.

the district court, appellate court, and Supreme Court levels becomes essential to determine whether sentencing mitigation reflects a rational evidentiary reinterpretation or merely an unstructured manifestation of judicial leniency.

Within Indonesia's plural legal system,¹⁰ this issue may also be examined through the lens of Islamic criminal law (*fiqh jināyah*). Narcotics offenses fall within the category of ta'zīr, rather than ḥudūd, thereby allowing discretionary sentencing by judges. Such discretion, however, is normatively guided by the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the protection of intellect (*ḥifz al-'aql*) and life (*ḥifz al-nafs*),¹¹ both of which are directly threatened by narcotics abuse. Substantive mitigation of punishment may therefore be justified when it demonstrably serves public welfare (*maṣlaḥah*) and minimizes harm (*mafsadah*), especially through structured rehabilitative interventions.

Nevertheless, Islamic legal principles such as al-*maṣlaḥah al-mursalah*, *sadd al-dharā'ī'*, and proportionality require that any departure from severe punitive standards be grounded in objective and verifiable evidence, including documented dependency assessments, clinical evaluations, and the absence of trafficking indicators. Islamic criminal law is thus not positioned as an alternative normative system to positive law but rather as an evaluative ethical framework for assessing the coherence, accountability, and proportionality of judicial discretion within the national legal order.

A growing body of scholarship has identified that sentencing disparities in narcotics cases in Indonesia primarily stem from normative ambiguity and divergent interpretations of Law No. 35 of 2009, particularly in distinguishing drug users from traffickers. Laksana et al. and Winjaya Laksana et al. demonstrate that the inconsistent application of Articles 111, 112, and 127 has generated legal uncertainty, undermined access to rehabilitative measures, and intensified sentencing inequality in judicial practice.¹²

Other studies advocate policy reform through humanistic and value-based approaches, including the integration of *maqāṣid al-sharī'ah* and restorative justice in the handling of narcotics cases, as illustrated by Waris et al.¹³ Meanwhile, victimless crime analyses and human rights perspectives highlight the structural consequences of punitive drug policies, such as prison overcrowding and the erosion of prisoners' rights

¹⁰ Fradhana Putra Disantara, "Konsep Pluralisme Hukum Khas Indonesia Sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (June 14, 2021): 1–36, <https://doi.org/10.35673/ajmpi.v6i1.1129>.

¹¹ Lukman Arake, "Agama Dan Negara Perspektif Fiqh Siyasah," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 3, no. 2 (2018): 79–116, <https://doi.org/10.35673/ajmpi.v3i2.200>.

¹² Laksana et al., "The Disparities in Punishment for Narcotic Addiction: Does It Reflect the Value of Justice?"; A Winjaya Laksana et al., "Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity," *Yuridika* 40, no. 2 (2025): 253–70, <https://doi.org/10.20473/ydk.v40i2.68153>.

¹³ I Waris et al., "Reframing Public Policy on Narcotic Case Dismissals: Integrating Maqasid Al-Shari'ah and Restorative Justice in the Contemporary Era," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 566–96, <https://doi.org/10.32332/milrev.v4i1.10579>.

protections.¹⁴ While these contributions enrich normative and policy-oriented debates, they remain largely focused on macro-level analysis and have not sufficiently examined how judicial discretion is constructed through legal reasoning within a single concrete case across multiple levels of adjudication. Consequently, there remains a significant research gap in integrating vertical, multi-level judicial analysis with an evaluation of sentencing discretion grounded in both positive law and Islamic criminal law within Indonesia's plural legal system. This study is designed to address that gap.

Against this background, this article seeks to reconstruct and critically evaluate the judicial reasoning in Supreme Court Decision No. 4634 K/Pid.Sus/2023 through a normative-doctrinal approach informed by *maqāṣid al-sharī'ah*. Specifically, the study aims to: (1) assess the legal legitimacy of sub-minimum sentencing under Indonesia's mandatory minimum narcotics regime; (2) examine the consistency and rationality of judicial reasoning across adjudicative levels; and (3) formulate minimum evidentiary criteria to ensure that judicial discretion remains proportionate, accountable, and compatible with legal certainty and Islamic normative principles. By integrating doctrinal legal analysis with purposive ethical reasoning, this article contributes to the refinement of judicial discretion governance in narcotics adjudication in Indonesia and offers policy-relevant insights for harmonizing punitive rigor with rehabilitative justice.

2. Legal Material and Methods

This article employs a normative juridical (doctrinal) research method, which is appropriate for examining the legitimacy of judicial reasoning and sentencing practices within the framework of statutory law, judicial precedents, and legal principles. The research focuses on the analysis of legal norms governing narcotics offences, judicial discretion, and mandatory minimum sentencing under Indonesian law, as well as their interaction with principles derived from Islamic criminal law.

The primary legal materials consist of statutory regulations, judicial decisions, and authoritative policy instruments. Statutory materials include Law No. 35 of 2009 on Narcotics, relevant provisions of the Indonesian Criminal Code, and related regulations governing rehabilitation and sentencing policy. Judicial materials primarily comprise Supreme Court Decision No. 4634 K/Pid.Sus/2023 as the main case under study, together with the corresponding District Court and High Court decisions, which are analyzed to reconstruct judicial reasoning at each level of adjudication. In addition, Supreme Court Circular Letter No. 4 of 2010 and other relevant jurisprudence are examined to assess the normative basis for rehabilitative and sub-minimum sentencing.

¹⁴ E M Chandra, "Victimless Crime in Indonesia: Should We Punished Them?," *Padjadjaran Jurnal Ilmu Hukum* 6, no. 2 (2019): 216–32, <https://doi.org/10.22304/pjih.v6n2.a1>; D M Iklima Salsabil and I W P Pratomo, "Human Rights Guarantee for Prisoners in the Perspective of Correctional System in Indonesia," *Lex Scientia Law Review* 1, no. 1 (2017): 33–40, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85175103046&partnerID=40&md5=3da1e4c9fe8f6da2b1e9c29b5ae7f2a3>.

Secondary legal materials include scholarly writings, journal articles, and authoritative commentaries on mandatory minimum sentencing, judicial discretion, narcotics policy, and Islamic criminal law (*fiqh jināyah*), particularly studies addressing *ta'zīr* sanctions and the objectives of Islamic law (*maqāṣid al-sharī'ah*). These materials are used to contextualize the doctrinal analysis and to identify gaps in existing scholarship.

The research adopts a case-based and comparative analytical approach. First, a vertical analysis is conducted by systematically examining the reasoning employed by the District Court, High Court, and Supreme Court in the same case to identify consistencies, shifts, or ruptures in legal interpretation and evidentiary assessment. Second, a normative evaluation is undertaken to assess whether the deviation from the statutory mandatory minimum can be justified under Indonesian positive law, particularly in light of the principles of legality, legal certainty, and proportionality.

In parallel, the study applies an Islamic criminal law analytical framework to evaluate the substantive legitimacy of the sentencing decision. Islamic criminal law is not treated as a source of binding positive law, but as an evaluative perspective grounded in *maqāṣid al-sharī'ah*, especially the protection of intellect (*ḥifẓ al-'aql*) and life (*ḥifẓ al-nafs*), and in the doctrine of *ta'zīr*. This framework is used to assess whether the exercise of judicial discretion aligns with principles of public welfare (*maṣlahah*), harm prevention (*mafsadah*), and proportionality.

Legal materials are analyzed using qualitative doctrinal interpretation, including statutory interpretation, systematic interpretation of judicial reasoning, and conceptual analysis of legal principles. The findings from the positive law analysis and the Islamic law evaluation are then synthesized to formulate an integrative accountability model, consisting of minimum evidentiary requirements and procedural safeguards aimed at reconciling judicial discretion with legal certainty and normative coherence.

This methodological design enables a comprehensive assessment of sub-minimum sentencing in narcotics cases, both as a matter of doctrinal legality and as an issue of normative justification within Indonesia's plural legal system.

3. Results and Discussion

3.1. Positive Criminal Law Perspective: Minimum Sentencing, Judicial Discretion, and Legal Certainty

This subsection examines Supreme Court Decision No. 4634 K/Pid.Sus/2023 by situating the case within Indonesia's statutory minimum sentencing regime, tracing the judicial trajectory across three levels of courts, and assessing its implications for legality and consistency. The case originated from the seizure of approximately 0.18 grams of methamphetamine in a small plastic package accompanied by a smoking device, later confirmed by laboratory analysis. At first instance, the Situbondo District Court convicted

the defendant under Article 112(1) jo. Article 132(1) of Law No. 35 of 2009 and imposed four years' imprisonment and a fine of IDR 800 million. The court emphasized formal legal certainty, reasoning that the elements of possession and control of Class I narcotics were clearly established by both physical evidence and surrounding circumstances. On appeal, the Surabaya High Court fully affirmed this judgment, signaling institutional continuity in evidentiary assessment and statutory interpretation.

The legal controversy crystallized at the cassation stage when the Supreme Court reduced the prison term to one year and six months while maintaining the same fine.¹⁵ Although the Court rejected the defendant's legal arguments and upheld the conviction under Article 112(1) jo. Article 132(1), it relied primarily on proportionality and the small quantity of drugs to justify mitigation. This move marked a significant shift from rule-based adjudication toward policy-oriented balancing, effectively privileging substantive justice over statutory rigidity.¹⁶ Yet, the Court neither requalified the offense nor identified a clear normative exception that would permit deviation from the statutory minimum. Consequently, the decision generated a doctrinal tension between judicial discretion and the legislature's intent to standardize punishment in narcotics cases.

Minimum sentencing provisions in Indonesian special criminal law are designed to curb disparity, reinforce deterrence, and reflect the exceptional gravity of narcotics crimes.¹⁷ Article 112(1) explicitly prescribes a minimum of four years' imprisonment, thereby limiting the scope of judicial variation through predetermined legislative boundaries. While Law No. 48 of 2009 guarantees judicial independence, such independence operates within the architecture of legality rather than above it. In this case, the Supreme Court's reliance on drug quantity as a mitigating factor lacked a textual basis in the Narcotics Law, which does not recognize quantity-based exceptions to the minimum penalty. This interpretive gap raises concerns regarding the principle of *nulla poena sine lege* and the predictability of criminal sanctions.

Beyond issues of legality, the decision reveals more fundamental procedural deficiencies in the implementation of a rehabilitation-oriented narcotics justice framework within a legal regime that normatively adopts a dual-track approach treating narcotics offences as serious crimes subject to severe criminal sanctions under Articles 111–116 of the Narcotics Law, while simultaneously recognising drug use as a public health issue

¹⁵ Mahkamah Agung RI, "Putusan Nomor 4634 K/Pid.Sus/2023," *Direktori Putusan Mahkamah Agung Republik Indonesia*, 2023.

¹⁶ Laksana et al., "The Disparities in Punishment for Narcotic Addiction: Does It Reflect the Value of Justice?"

¹⁷ Dayang Debby et al., "Penerapan Asas The Binding Persuasive of Precedent Di Bawah Ketentuan Minimum Khusus Dalam Tindak Pidana Narkotika," *Risalah Hukum* 17, no. 2 (2021): 85–97, <https://doi.org/https://doi.org/10.30872/risalah.v18i2.632>.

warranting rehabilitation under Articles 54 and 127. If the Supreme Court indeed intended to shift the sentencing paradigm from a repressive approach toward a therapeutic treatment of drug users, its legal reasoning should have been explicitly anchored in Article 127 of the Narcotics Law, the relevant Supreme Court Circular Letters, and supported by an objective and standardised integrated assessment mechanism. However, the case file contains no evidence of psychiatric examinations, clinical diagnoses, or professional recommendations from the National Narcotics Board (BNN) or other authorised medical institutions. The absence of such evidentiary foundations not only undermines the juridical legitimacy of the sentence mitigation imposed, but also reflects a structural gap between formally articulated rehabilitative norms and criminal justice practices that remain heavily reliant on unregulated judicial discretion.¹⁸ This condition blurs the conceptual distinction between drug users and traffickers, potentially contravenes the principles of proportionality and equality before the law, and further underscores the ineffectiveness of the Integrated Assessment Team as introduced through Supreme Court Circular Letter No. 4 of 2010.¹⁹ Accordingly, this case should not be regarded as a mere casuistic anomaly, but rather as a manifestation of the weak coherence of Indonesia's dual-track system in narcotics control policy, which normatively differentiates between a repressive approach toward illicit drug trafficking and a therapeutic approach toward users suffering from drug dependence.

A proper distinction between users and distributors requires a holistic evidentiary matrix encompassing packaging patterns, transactional tools, witness testimony, digital traces, and clinical indicators of dependency.²⁰ By privileging quantity alone, the Supreme Court risked oversimplifying this complex differentiation and setting a fragile precedent for future cases. Such an approach may inadvertently incentivize strategic litigation rather than principled adjudication, thereby increasing systemic inconsistency. To mitigate this risk, this study proposes three safeguards: objective evidentiary criteria differentiating users from traffickers, mandatory clinical assessment when departing from statutory expectations, and transparent judicial reasoning on evidentiary weighting. Collectively, these measures would recalibrate the balance between discretion, proportionality, and legal certainty.

Taken together, the decision exemplifies a structural tension within Indonesia's narcotics regime between individualized justice and rule-bound legality. While the Supreme Court sought to humanize sentencing, its method generated doctrinal ambiguity

¹⁸ N V Ariani et al., "Reforming Indonesia's Drug Sentencing Law: Normative, Comparative and Restorative Justice Perspectives," *Journal of Cultural Analysis and Social Change* 10, no. 2 (2025): 3301–13, <https://doi.org/10.64753/jcasc.v10i2.2099>.

¹⁹ Mahkamah Agung RI, "Surat Edaran Mahkamah Agung No. 04 Tahun 2010 Tentang Penempatan Penyalahgunaan, Korban Penyalahgunaan Dan Pecandu Narkotika Ke Dalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial," *Mahkamah Agung Republik Indonesia*, 2010.

²⁰ H S Bakhtiar et al., "The Utilisation of Scientific Crime Investigation Methods and Forensic Evidence in the Criminal Investigation Process in Indonesia," *Egyptian Journal of Forensic Sciences* 15, no. 1 (2025), <https://doi.org/10.1186/s41935-025-00456-y>.

and procedural fragility. Rather than rejecting discretion outright, the analysis suggests that discretion must be institutionalized through clearer evidentiary standards and articulated reasoning. In this sense, the case functions less as an anomaly than as a catalyst for reform in sentencing governance.

3.2. Islamic Criminal Law Perspective: Maqāṣid al-Sharī'ah, Ta'zīr, and Proportional Justice

From the standpoint of Islamic criminal law, narcotics regulation is best understood through the framework of *maqāṣid al-sharī'ah*, particularly the objectives of protecting life (*ḥifẓ al-nafs*) and preserving intellect (*ḥifẓ al-'aql*).²¹ Narcotics directly threaten both values by impairing cognition and endangering physical well-being, thereby justifying strong normative intervention. However, modern drugs are not explicitly categorized as *ḥudūd* offenses in classical jurisprudence, placing their regulation within the domain of *ta'zīr*. This classification grants judges discretionary authority to calibrate punishment in light of public interest (*maṣlaḥah*) and harm prevention (*daf' al-mafsadah*). The prohibition of narcotics is analogically grounded in the Prophetic tradition that “every intoxicant is *khamr*, and every *khamr* is forbidden”.²²

Within the framework of contemporary Islamic criminal jurisprudence, two normative imperatives operate simultaneously: the principle of *sadd al-dharā'i'* and the maxim *kullu muḍarr yudḥar*, which justify stringent measures against narcotics distribution in order to block pathways of collective harm and the orientation of *maqāṣid al-sharī'ah*, particularly the protection of life (*ḥifẓ al-nafs*) and intellect (*ḥifẓ al-'aql*) which supports rehabilitative responses toward individuals proven to be mere users. Accordingly, the juridical core of *ta'zīr* sentencing is fundamentally evidentiary, namely the determination of whether the defendant functions as a distributor or a dependent user.²³ This assessment requires an integrated evaluation of material evidence (quantity, packaging patterns, weighing devices, or transactional tools), behavioral indicators (transaction traces, network affiliation, and circulation patterns), and medical evidence (clinical diagnosis of dependency). Where distributive intent is established, proportionate and preventive sanctions, including imprisonment (*al-ḥabs*), are normatively justified as instruments of social protection; conversely, where the evidence indicates only minimal possession without transactional or network indicators, proportionate *ta'zīr* combined with rehabilitation is more consistent with the objectives of recovery and harm reduction.²⁴

²¹ Waris et al., “Reframing Public Policy on Narcotic Case Dismissals: Integrating Maqasid Al-Shari'ah and Restorative Justice in the Contemporary Era.”

²² S Balto, “How Does Narcotic Control Impact upon Human Individual Rights: An Islamic and International Human Rights Perspectives,” *Journal of Law and Medicine* 31, no. 1 (2024): 201–9, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85193676157&partnerID=40&md5=e750dbe550fb3857f01d281204835180>.

²³ A W Laksana et al., “Fiqh Jinayah’s Approach to Children Trapped in the Octopus of Narcotics Trafficking,” *Jurnal Ilmiah Mizani* 12, no. 1 (2025): 309–21, <https://doi.org/10.29300/mzn.v12i1.4888>.

²⁴ Mgs. Nazaruddin, “PEMULIHAN TERPIDANA PENGGUNA NARKOBA DI PUSAT YAYASAN REHABILITASI NARKOBA AR-RAHMAN PALEMBANG,” *Jurnal Ilmiah Islam Futura* 19, no. 1 (2019): 170–90, <https://doi.org/10.22373/jiif.v19i1.3794>.

Nevertheless, national judicial practice reveals divergent evidentiary weighting between lower courts and the Supreme Court most notably an excessive emphasis on drug quantity alone which, although defensible as a form of legitimate *ijtihad* within Islamic legal reasoning, risks generating judicial disparity in the absence of clear and standardized evidentiary guidelines.²⁵

Applying these principles to the present case, the possession of 0.18 grams of methamphetamine and a personal smoking device suggests *prima facie* personal use. The District Court and High Court relied on broader contextual cues to sustain liability under Article 112, interpreting certain circumstances as indicative of distribution. By contrast, the Supreme Court elevated drug quantity as the primary mitigating factor, effectively reframing the defendant closer to a user than a trafficker. This divergence illustrates how different judicial actors may exercise *ijtihad* based on distinct evidentiary emphases.²⁶ Yet, such variation underscores the need for standardized proof criteria to avoid arbitrary outcomes.

Although proportionality considerations are formally invoked, the mitigation adopted by the Supreme Court appears procedurally fragile from a *maqāsid* perspective. Legitimate mitigation in Islamic law should not rest solely on small quantity thresholds, but ideally requires verifiable evidence regarding the defendant's dependency status and the prospective effectiveness of rehabilitation. In the absence of formal medical or psychological assessment, the judicial reasoning risks becoming intuitive rather than evidentiary.²⁷ Within *fiqh* methodology, discretionary mitigation (*ta'zīr*) must be anchored in objectively ascertainable facts rather than abstract compassion. Without such an evidentiary foundation, judicial outcomes risk generating uncontrolled variations of *ijtihad* rather than purposive and consistent justice.²⁸

Comparatively, Indonesian positive law reflects a similar ethical architecture: Article 127 prioritizes rehabilitation for users, while Article 112 targets traffickers.²⁹ Islamic criminal law supplies the moral rationale protection of intellect and life while Indonesian law provides procedural instruments such as integrated assessment and evidentiary standards. The two systems are thus normatively compatible but methodologically distinct, with Islamic law emphasizing teleology and Indonesian law

²⁵ Laksana et al., "The Disparities in Punishment for Narcotic Addiction: Does It Reflect the Value of Justice?"

²⁶ M Romdoni and S Fitriasih, "DISPARITAS PEMIDANAAN DALAM KASUS TINDAK PIDANA KHUSUS NARKOTIKA DI PENGADILAN NEGERI TANGERANG," *Masalah-Masalah Hukum* 51, no. 3 (2022): 287–98, <https://doi.org/10.14710/mmh.51.3.2022.287-298>.

²⁷ Wilson Bugner F Pasaribu et al., "LEGAL IMPLICATIONS IN THE IMPLEMENTATION OF REHABILITATION ASSESSMENT FOR NARCOTICS ABUSE ADDICTS," *Revista de Gestao Social e Ambiental* 18, no. 4 (2024): 1–15, <https://doi.org/https://doi.org/10.24857/rgsa.v18n4-068>.

²⁸ I.M.W.W. Putra, D Sulistianingsih, and D Muhtada, "Fulfilment of the Right to a Fair Justice for Victims and Narcotics Abusers in Indonesia," *Indonesian Journal of Advocacy and Legal Services* 6, no. 2 (2024): 205–34, <https://doi.org/10.15294/ijals.v6i2.30568>.

²⁹ Y Saefudin, "Rehabilitation Policy for Drugs Abuse in Indonesia," *Indian Journal of Forensic Medicine and Toxicology* 14, no. 4 (2020): 4111–15, <https://doi.org/10.37506/ijfmt.v14i4.12285>.

emphasizing legality. Their convergence lies in a shared commitment to proportionality and harm reduction.

This study therefore advocates a synthesized model in which *maqāsid* functions as the normative compass and positive law as the procedural vehicle. Such integration would require a minimum evidentiary checklist, mandatory clinical assessment when mitigation is contemplated, and transparent reasoning that links facts to objectives. It would also necessitate clearer judicial guidelines on how to operationalize *ta'zīr* within Indonesia's statutory framework. In this way, ethical legitimacy and legal certainty could be mutually reinforcing rather than antagonistic.

In conclusion, from an Islamic criminal law perspective, the Supreme Court's decision could be justified as an exercise of *ta'zīr* aimed at proportionality—but only if supported by objective clinical evidence and a documented rehabilitative rationale. In the absence of such documentation, the ruling risks undermining both procedural justice and substantive *maqāsid*. This reinforces the broader argument that discretionary sentencing must be disciplined by clear evidentiary standards that align ethical objectives with legal accountability.

4. Conclusion

This study finds that, from the standpoint of Indonesian positive criminal law, Supreme Court Decision No. 4634 K/Pid.Sus/2023 raises serious normative concerns because it imposed a sentence below the statutory minimum prescribed under Article 112(1) of Law No. 35 of 2009 without a sufficiently articulated legal foundation. The absence of clear justificatory mechanisms such as a formal requalification of charges, documented clinical assessment, or an integrated recommendation from the National Narcotics Board weakens the principle of legality (*nulla poena sine lege*), undermines legal certainty, and heightens the risk of sentencing disparity in narcotics adjudication. More fundamentally, the case exposes a structural tension within Indonesia's narcotics governance between mandatory minimum sentencing, judicial discretion, and rehabilitative justice, indicating that the controversy reflects not merely an isolated judicial deviation but a deeper institutional design challenge. From the perspective of Islamic criminal law, sentencing mitigation finds conditional normative space within the doctrines of *ta'zīr* and *maqāsid al-sharī'ah*, particularly the protection of intellect (*ḥifẓ al-'aql*) and life (*ḥifẓ al-nafs*), which support proportionality and rehabilitative orientation for genuine users. Nevertheless, even within this jurisprudential tradition, the legitimacy of discretionary reasoning remains procedurally fragile when leniency is not grounded in objective medical evidence or verifiable dependency assessments. Accordingly, this study advances an integrative accountability model anchored in a minimum evidentiary checklist, mandatory clinical assessment prior to mitigation, and transparent judicial reasoning on evidentiary weighting, so that any deviation from statutory minimum penalties becomes defensible under both positive law and Islamic normative principles.

Beyond the Indonesian context, these findings contribute to broader comparative debates on how rigid sentencing regimes can reconcile individualized justice with rule-based legality without eroding predictability and accountability. While this study is

necessarily limited to a single intensive case analysis, the proposed evidentiary governance framework offers a transferable analytical reference for jurisdictions confronting similar tensions between mandatory sentencing, judicial discretion, and rehabilitative policy objectives.

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