

Judicial Activism in Criminal Sentences Below the Minimum Sentence in Narcotics Cases: A Criminal Accountability Perspective*

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Abstract

Sentencing decisions that fall below the specific minimum stipulated by law are, at first glance, considered a violation of the principle of legality, which requires that punishment strictly follow the written law. However, within the framework of Judicial Activism, such decisions may be justified when they adhere to the fundamental principles of criminal law, reflect the dynamic development of legal thought, and protect the defendant's fundamental rights from arbitrary or disproportionate enforcement. This study aims to analyze the extent to which judges may exercise judicial activism when imposing sentences below the statutory minimum. The research employs a normative legal method using statutory and conceptual approaches to reinterpret the principle of legality in its function as a regulatory instrument in criminal law and in relation to the concept of criminal responsibility. The study explores how the judiciary, as an independent pillar of the legal system, can play a corrective role in achieving substantive justice. The findings reveal two key conclusions. First, Judicial Activism may be applied within the bounds of the principle of legality, enabling judges to rectify prosecutorial errors and issue fairer sentences by balancing the defendant's culpability with the circumstances surrounding the crime. This flexibility ensures that the law serves justice rather than rigid formalism. Second, judges must use clear guidelines when exercising such discretion, notably by assessing the degree of the defendant's responsibility and the factual findings revealed during trial proceedings. Ultimately, this study underscores that judicial activism, when grounded correctly in legal reasoning and human rights protection, strengthens the legitimacy and humanity of the criminal justice system.

Keywords: Judicial Activism; Criminal Decision; Criminal Liability; Narcotics Crimes

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A. INTRODUCTION

Deviation from the minimum imprisonment sentence by the court, as stipulated by law in the court decision it's a form of disobedience to the legality principle from an a priori view. This is because, in a criminal case, based on Article 182 paragraph (3) and (4) of the National Criminal Procedure Code (KUHP), it states that when deciding a case, the judge is obligated to refer to the public prosecutor's indictment letter. Eddy O.S. Hiariej said that the legality principle in criminal procedure law has the purpose to limit law enforcers' arbitrariness addressed to the suspect or defendant in the criminal law enforcement process. Therefore, Eddy O.S. Hiariej claims that every criminal law enforcement process by law enforcers cannot be done without criminal procedural law, as it is legally based in order to prevent arbitrariness (Hiariej, 2015, p. 126).

It's important for the judge to make a court decision aligning with the indictment, just as Topo Santoso's opinion stresses that criminal sentences have intrusive or specifically take away someone else's freedom. So if the criminal sentence handed down by the judge to the defendant contains a foul or indecision, it can be considered the same as taking away the defendant's freedom rights (Santoso, 2022, p. 128). Therefore, hypothetically, it is necessary for the judge to conduct and act in restraint or namely "judicial restraint," to step in as a "mini-parliament" that can decide a case by widening or creating new legal norms (Dramanda, 2014, p. 618) in order to prevent judicial dictatorship caused by overextended authority possessed by the judge (Rahardjo, 2003, p. 229).

However in the practice, there are criminal court decisions imposing deviations from special minimum criminal sentences provisions as specified in the law and indicted by public prosecutors. Just like State Court Decision Kraksaan Number 201/Pid.Sus/2024/PN Krs where the public prosecutor was indicting alternative indictment, which are first based on Article 114 paragraph (1) Law Number 35/2009 about Narcotics (Narcotics Law) that has 5 years imprisonment as it minimum sentence, or the second one is Article 112 paragraph (1) Narcotics Law that has 4 years imprisonment as it minimum sentence. In the a quo court decision, the defendant was sentenced 2 years 4 months imprisonment which significantly far from the minimum imprisonment sentencing stipulated by law. Even the appellate and cassation levels

strengthened this state court decision by imposing a sentence of 1 year and 6 months.

The *a quo* court decision it's tangibly puts the wrongdoing of the defendant before indictment as a courier as well as narcotics stuff owner, who is not considered a consumer of it, becomes the consumer realized in the judge's considerations based on the legal facts found in the court trial. Those two *a quo* court decisions refer to Supreme Court Circular Letter (SEMA) Number 3/2015, SEMA Number 1/2017, and SEMA Number 3/2023 as guidance for sentencing that states if there are particular conditions based on the facts found in the court trial, which can provide a basis for the judge to deviate from the minimum sentencing criminal law provision stipulated in the Narcotics Law.

From the formal legalistic and judicial restraint paradigms, these two court decisions above will create conclusions that the act and activity of the judge are considered illegal because they just made sentencing deviate from special minimum provision written in the public prosecutor indictment letter. However, on the other side, if we look at the judicial activism paradigm (Prabowo, 2022, p. 776), these court decisions can be considered contain justice. Such a thing is caused in every case with its own characteristics, which can result in sentencing disparity. Even surpasses the minimum limitation sentencing that has been prescribed by law. In this matter, even Lucas Prakoso said that the disparity of sentencing happened is a normal thing since in every case, there are different motive and purpose from each defendant when they commit crime. Also there are particular special condition which made the sentencing policy in the laws seems not adequate enough so the judicial activism needed.

Therefore, disparity in sentencing showed that there is a justice dimension that needs to be prioritized over legal certainty in the form of uniformity *strafmaat* to impose a misery of imprisonment sentence to each case with its own characteristic (Prakoso, 2024). Besides that, judicial activism can be understood as a sentencing policy applicable. Lilik Mulyadi said that the sentencing practice is based on applicable policy implemented by the judge and formulated through legislation (Mulyadi). However, from Mulyadi's perspective, between these two, the applicable sentencing policy is more important because this can reflect the judge's humane and justice values in the court trial, aligning with social justice (Mulyadi, p. 7). Compared with formulative policy that only relies on written text without a deep understanding of the context of the case behind the reason why the defendant committed this crime. As of through applicable sentencing policy could

encompasses people live values. Consequently, it's important to examine judicial activism practice in the criminal court cases with particular characteristics, so that the sentencing court decision can be accordance with material truth and justice values.

Based on the above description, this article will discuss the theoretical basis for the conceptual and practical application of Judicial Activism by Judges in sentencing decisions that deviate from the special minimum sentence. Furthermore, the Judge's guidelines for implementing Judicial Activism are to consider the Defendant's concept of criminal responsibility during the trial, guided by the Defendant's guilt revealed during the trial.

B. METHODS

This article employs a normative legal research method, which focuses on the systematic examination of legal norms, principles, doctrines, and statutory provisions relevant to the issues under study. Normative legal research is generally understood as a method that incorporates, explains, and interrelates legal norms in a structured and coherent manner, enabling scholars to analyze legal problems and formulate prescriptive solutions to address them (Marzuki, 2019, p. 32). This approach seeks not only to describe existing legal rules but also to evaluate their adequacy and consistency in resolving contemporary legal issues.

Normative legal research is often referred to as black-letter law research because it treats law as an autonomous discipline that can be examined through legislation, legal doctrines, judicial decisions, and other authoritative legal sources (Hakim, 2016, pp. 105–106). In this context, the study investigates the legal framework governing fraud, financial pyramid schemes, and multi-level marketing practices through a comprehensive analysis of relevant legal materials. The research relies on both primary legal sources, including statutes and regulations, and secondary legal sources, such as scholarly literature and legal commentaries. By examining and interpreting these authoritative texts, the study aims to clarify legal concepts, identify regulatory gaps, and provide a systematic understanding of the challenges associated with the legal qualification of financial pyramid schemes (McConville & Chui, 2007, p. 4).

C. RESULT AND DISCUSSION

1. Judicial Activism as a Law Paradigm

Just as Arthur Schlesinger Jr. commented regarding the conceptualization of judicial activism that he cited from Keenan D. Kmiec, the wise judge spirit that can know law, constitution, and politics can't be separated, which makes the judge consciously unable to look away from the fact that law has been associated with politics, so that when judges carry out their authority function, court decisions must be based on surrounding social conditions (Kmiec, 2004, p. 1447). Even Schlesinger Jr. stresses that judicial activism is protecting the human rights of a party oppressed by legislative policy chosen through conservative means. As a result, it can be said that if judges don't meddle in human rights protection efforts through implementing judicial activism in the trial, they are considered to be betraying the soul and purpose of the Constitution itself (Kmiec, 2004, p. 1448-1449).

At the beginning of its occurrence, Pan Mohammad Faiz said that judicial activism is interpreted as an abuse of power by judges, although it still brings some positive practice. From his perspective, this positive practice is expounded as an adaptation of legal shifting to the social dimension through the development of principles originating from the constitution or law text and existing previous court decisions to realize legal values or the constitution progressively (Faiz, 2016, p. 408-410). In line with this, Paulus Effendie Lotulung also interpreted judicial activism as judges' initiative to provide solutions and fill the vacuum of law caused by the dialectic of law that keeps developing in society, so the court decision can realize a sense of justice (Lotulung, 2011, p. 9). From Paulus perspective, judicial activism is used to take care of cases with concrete traits and static law, or when people are constantly developing. The law faces obscurity in its practice, so it needs a competent judge to find suitable, fair, and just new law through contemplating the case they take on (Lotulung, 2011, p. 8-9). Thus, it is proper for I Dewa Gede Palguna stated that judge is actually not only speaking the law to represent it (*la bouche de la loi*), but also emboldening just law to take care concrete case they are facing with found the new law as an obvious implementation of *ius curia novit* principle or known as judge always know the law and can't refuse to take care cases submitted to them (Palguna, 2018, p. 99).

In the activism judicial implementation, Christopher G. Buck, as cited by Pan Mohammad Faiz, explained that activism should adhere to existing law principles and cannot merely rely on a judge's discretion. Therefore, from Buck's opinion, there is a principle that can justify the validity of judicial activism, so the court decision can be categorized as virtue jurisprudence, one of its principles is called "implicationism". This principle directly emphasizes that there are unwritten citizen rights in the body of law. As a result, with the

judicial activism dimension in the court decision, and justified through this principle purports to perceive a paradigm and provide expanded protection for personal rights in the law, regarding those not realized by lawmakers but still predicted wisely by judges (Faiz, 2016, p. 411).

Randy E. Barnett said that the judicial activism doctrine calls for the development of substantive principles through law enforcement by law to become the basis of law evaluation. From his perspective, judicial activism is a guide for the judge to keep abreast of the fast development of law. In this phase, Barnett said that the meaning of "law" is to overcome the conception of law and substantive standards to evaluate laws (Barnett, 1987, p. 276). Barnett also shared his view regarding the equality principle that each person possesses, which cannot be violated. Then, the judge is faced with laws that represent the legislature *in casu* with its majority of people/constituents, and claims of certain individuals that their rights have been violated because of that law itself. In this context, Barnett also claims that the court *in casu* judge can't avoid their responsibility to evaluate the substantive standards of laws and make them relevant to individual actions considered to violate their rights. Thus, judicial activism is needed to enforce individual equality rights (Barnett, 1987, p. 277).

Based on the explanation above, it can be known that judicial activism is an act by a judge in the case of procedural law and court decisions that has the dimension to fill the vacuum of law and/or put aside the existing law if it is perceived that it cannot guarantee society's needs that are always thriving and developing. Besides, judicial activism is getting accepted, starting from court decisions that always contain principles of law enforcement that can be accepted as axioms that don't exist in law, or aligning with the society's development and purposes to protect individual rights.

2. The Conception of Criminal Law Responsibility

Criminal law responsibility is a concept of criminal sentencing to the defendant that is applied by the judge as guidance. Choirul Huda said that to decide whether the defendant can be imposed sentencing or not, its need to fulfill all the juridical requirements for considered guilty. Moreover, personal of the defendant is needed to take responsibility as well, especially related with conditions attached to the defendant when they committed the crime (Huda, 2015, p. 67-70). According to Septa Chandra, criminal law responsibility has a strong relation with the misery imposed requirements after proven with element of a criminal offense in the form of sentencing, resulting in creating a

feeling around people (Chandra, 2013, p. 41). This can happen because the result of the defendant's criminal offense, while on the other hand to guide back or foster defendant so they can return to live in society.

Roeslan Saleh retells Pompe's opinion that the conception of criminal law responsibility is determined based not only on the defendant's wrongdoing, which is not only psychological, but also on normative judgment if the defendant is doing something despicable, and they can actually avoid that offense if they want to (Saleh, 1983, p. 77). Aligning with that opinion, Agus Rusanto also gives an interpretation to criminal law responsibility as an objective disapproval of the accused as part of society and an individual for its benchmark. Rusianto also emphasizes that responsibility for the wrongdoing is moral and illegal. Morally means the intention of the offense contradicts prevailing moral values when they commit it, and illegally means violating laws (Rusianto, 2016, p. 135).

The consequences of choosing criminal law responsibility by the judge are that the sentencing court decision leads to disparity. This happened because criminal law responsibility emphasizes non-juridical aspects to estimate the severity of sentencing. Disparity occurred because of the appraisal of criminal law responsibility needs wrongdoing elements containing willfulness or correlation between intention and the committed criminal offense (Prastowo, 2014, p. 88). As a result, the willful degree estimated by the condition partakes in the criminal offense and results in various sentencing. Thus, Lucas Prakoso shared his opinion that disparity isn't a taboo matter, but rather shows prioritizing the justice dimension over the legal certainty dimension when a judge sentences a defendant (Prakoso, 2024).

In practice, criminal law responsibility is realized through a witness statement regarding the defendant's criminal offense when they are on trial. Choirul Huda also mentions judges are responsible for giving attention to the conditions of the defendant when they commit the criminal offense, even though the statements from witnesses were not elucidated thoroughly in the trial (Huda, 2015, p. 67). However, juridically, in the National Criminal Code (*Wetboek van Strafrecht*), the conception of criminal law responsibility does not attach itself specifically to decide which one is the most suitable sentencing for the defendant and leaves it to the judge. As a result, the sentencing in the form of *strafmaat* imposes upon the accused to make them miserable, doesn't have any benchmark to be appraised, especially for the appropriate sentencing to protect the accused's interests and society. Criminal responsibility conception can only be found limited and not thorough in Article 8 Paragraph (2) Law

Number 48/2009 concerning Judicial Power, which stresses that the judge can put consideration of the severity of the sentence and the good or bad deed defendant. In the *a quo* explanation, it is stated that if the court decision imposes upon the defendant, it must contain justice values and align with the severity of the wrongdoing committed by the defendant. As for the benchmark to appraise the rate of wrongdoing can refer to willfully act and elements of criminal law responsibility based on *beleid a quo*.

Roeslan Saleh cites Peters' opinion that, all this time, the wrongdoing element, especially in the Criminal Code, was attached to the defendant without a detailed explanation regarding the severity of wrongdoing classification. It can be matched with the low or high rates of sentencing (whether prison or fine). From Peters, as cited by Roeslan Saleh, wrongdoings in criminal law responsibility can be understood as principles of the politics of criminal implementation in the form of sentencing. A reproach for a wrongdoing without any further explanation has no meaning in criminal sentencing because it is only based on general wrongdoing without the defendant's specific conditions (Saleh, 1982, 36-37). Therefore, the meaning of wrongdoing cannot be separated from the reason for the specific wrongdoing and the purpose of sentencing itself.

3. The Practice of Judicial Activism in the Court Decision Sentencing Deviating from the Specific

In the Court Decision Kraksaan Number 201/Pid.Sus/2024/PN Krs, the indictment brought by the Public Prosecutor against the defendant was related to narcotics crimes under Article 114 or Article 112 of the Narcotics Law, which carry a minimum prison sentence of 5 and 4 years, respectively. In this court decision, the Judges sentenced the defendant to 2 years of imprisonment and a fine of 1,000,000,000 IDR (one billion rupiahs), with subsidiary imprisonment of 4 months, which means that the prison sentence was imposed below the minimum penalty specified in Article 112 or Article 114 of the Narcotics Law. In the *ratio decidendi* of the court decision, the panel of judges qualified the defendant as a user or victim of narcotics abuse with a *strafmacht* under Article 127 of the Narcotics Law, namely a maximum of 4 years.

Based on the legal facts revealed during the trial, the panel of judges stated that the defendant purchased narcotics for personal consumption and was using narcotics at the time of his arrest. Evidence in the form of 0.36 grams of crystal methamphetamine was also found. Therefore, based on these legal facts and accompanied by sentencing guidelines for judges referring to SEMA 4/2010, SEMA 3/ 2015, and SEMA 3/2023, the defendant was classified as a

narcotics abuser (Putusan PN Kraksaan Nomor 201/Pid.Sus/2024/PN Krs, p. 26-28). At the appellate level, which adjudicated the *a quo* decision through Court Decision Number 328/PID.SUS/2025/PT SBY, the panel of judges upheld the state court decision (Putusan Pengadilan Tinggi Surabaya Nomor 328/PID.SUS/2025/PT SBY) and at the cassation level through Court Decision Number 6075 K/Pid.Sus/2025, the Cassation panel of judges even revised the state court decision and reduced the sentence to 1 year and 6 months (Putusan Mahkamah Agung Nomor 6075 K/Pid.Sus/2025).

The approach of judicial activism is reflected in the considerations of the Court Decision Kraksaan, who stated that there were legal facts indicating that the defendant was a victim of drug abuse, which constituted a form of protection of the Defendant's rights to be tried in accordance with the legal facts presented at the trial, resulting in a fair sentence for the Defendant with reference to Article 127 of the Narcotics law and based on the Defendant's own guilt, which is part of criminal responsibility. This practice is in line with the concept of Judicial Activism with the principle of implicationism as adapted by Pan Mohammad Faiz from Christopher G. Buck. This principle affirms that there are citizens' rights that are not directly written in law. Thus, with a decision that has dimensions of judicial activism and is justified by this principle, the aim is to examine the paradigm and provide broader protection of rights in legal regulations that are not realized by lawmakers but are wisely predicted by judges (Faiz, 2016, p. 411). This is the basis for the practice of judicial activism by judges, who consistently assess the defendant's offense as an element not covered by the Narcotics Law or the Criminal Code WvS, through the mechanism of criminal liability of the defendant revealed in the trial, particularly the defendant as a narcotics user in the category of abuse, which is not appropriate if qualified under Article 114 of the Narcotics Law.

In addition, in Cassation Decision Number 6075 K/Pid. Sus/2025, which was a legal appeal by the public prosecutor against the Kraksaan State Court Decision, the Cassation panel of judges took a broader view of judicial activism, ruling that the defendant should not be charged under Article 114 of the Narcotics Law, as this article is oriented towards narcotics dealers and traffickers. Meanwhile, based on the legal facts revealed during the trial, the defendant purchased narcotics for his own personal use. Therefore, based on the principle of *in dubio pro reo*, the punishment must be in favor of the Defendant, namely Article 127 paragraph (1) of the Narcotics Law (Putusan Mahkamah Agung Nomor 6075 K/Pid.Sus/2025).

The cassation panel applied the paradigm of judicial activism with two principles, namely criminal liability and the principle of *in dubio pro reo*, as well as the secondary function of the principle of legality. First, the Court of Cassation considered wrongdoing as the main element of criminal liability, stating that the offense of purchasing narcotics as an element of Article 114 of the Narcotics Law could not be applied to the defendant because, based on the facts of the trial, the Defendant purchased the narcotics not for resale, but for personal use. Therefore, based on the defendant's wrongdoing, which was qualified as a narcotics user and not a narcotics dealer or distributor, the Defendant's criminal liability as stipulated in Article 114 of the Narcotics Law, which carries a minimum sentence of 5 years, was negated, and instead, Article 127 of the Narcotics Law, which carries a maximum sentence of 4 years, was applied. Thus, sentencing through the concept of judicial activism based on the principle of criminal liability was applied by the cassation court.

Agus Rusianto argues that the form of the defendant's wrongdoing as an element of criminal liability assessment after the elements of a criminal law have been fulfilled, is carried out because wrongdoing and criminal liability are always correlated with punishment, particularly the purpose of punishment. The purpose of punishment is derived not only from the defendant's psychological wrongdoing but also from normative wrongdoing (Huda, 2015, p. 78). The circumstances surrounding the defendant's actions must also be considered in relation to the intent and purpose of the lawmaker in establishing the criminal norms in the legislation imposed on the defendant regarding the reprehensible nature of the defendant's actions. In this context, judges must be able to examine the legislation that has been enacted from a teleological perspective. If there is uncertainty regarding the implementation of the law due to the constant development of society, as expressed in the phrase *het recht hink achter de feiten aan*, then judges must act as judge making law (Rusianto, 2016, p. 146).

Therefore, it is appropriate for Randy E. Barnett to emphasize that the doctrine of judicial activism is important as a paradigm for judges and calls for the development of substantive principles through law enforcement by judges to serve as a basis for evaluating laws. Thus, judicial activism is a guideline that judges can follow to keep up with developing laws. At this stage, Barnett mentions that the meaning of "law" goes beyond the definition of a statute and is a substantive standard for evaluating laws (Barnett, 1987, p. 276).

Second, the concept of judicial activism by the cassation court judges is manifested through the judges' consideration of the principle of *in dubio pro reo*

and the principle of legality. These principles are fundamentally interrelated and are embodied in both practice and concept. In practice, the provision on *in dubio pro reo* stems from the understanding that if there is doubt regarding the exercise of law enforcement authority, particularly by judges, then this must benefit the defendant as stipulated in Article 182 paragraph (6) letter b of the Criminal Procedure Code. This is because criminal sanctions have an intrusive impact, namely depriving others of their freedom, so that if there are errors or doubts in the application of sanctions or criminal law instruments by judges, this is tantamount to depriving the defendant of their human rights (Santoso, 2022, 128). In this context, the public prosecutor did not charge the defendant under Article 127 of the Narcotics Law, which qualifies him as a narcotics user, but charged him under Article 114 of the Narcotics Law, which qualifies a person as a narcotics dealer, and Article 112 of the Narcotics Law, which qualifies a person as possessing narcotics without a clear purpose (Putusan Nomor 14 K/Pid.Sus/2015; Putusan Nomor 52 K/Pid.Sus/2016; Putusan Nomor 72 K/Pid.Sus/2016). Therefore, given that the legal facts revealed during the trial were that the Defendant was a drug user under Article 127 of the Narcotics Law, it was appropriate for the cassation panel to declare that the punishment should be in favor of the defendant, even though article *a quo* was not charged during examination.

Conceptually, the principle of legality in special minimum criminal rules allows for penalties to be imposed below the special minimum because, in principle, the principle of legality adheres to the principle of subsidiarity, namely that a lighter sentence may be imposed if it is deemed sufficient to restore the situation resulting from the criminal act due to the nature of criminal law as an *ultimum remedium*. This is because the principle of subsidiarity emphasizes the achievement of a penal orientation through the imposition of penalties by law enforcement officials in a proportionate manner and not always in the form of punishment to restore the protected legal interests, particularly in the case of the defendant's actions, which should be classified as drug use or abuse Article 127 Narcotics Law, rather than as a narcotics dealer or trafficker as defined in Article 114 Narcotics Law.

Muhammad Fatahillah Akbar argues that the use of judicial activism in formal and material criminal law differs. Using an analysis of the Constitutional Court's decision, he believes that judicial activism in formal criminal law can be used to expand efforts to protect individual rights, such as expanding the scope of pretrial proceedings, so that the implementation of coercive powers by law enforcement officials, which continue to evolve, cannot be tested in pretrial hearings, such as the addition of new norms in the form of expanding the scope

of pretrial hearings in determination of suspects in Constitutional Court Decision Number 21/PUU-XII/2014 (Akbar, 2024, p. 459).

Meanwhile, in the scope of substantive criminal law, using the approach of Constitutional Court Decision Number 46/PUU-XIV/2016, judicial activism is manifested in the inability to create new norms that are classified as criminalization, because if the meaning oriented towards criminalization is expanded, then this expansion will violate a person's human rights. According to him, judicial activism in the field of substantive criminal law must be decriminalizing in nature (Akbar, 2024, p. 460).

Although the judicial activism approach is manifested in criminal policy by the Constitutional Court in Judicial Review, there is a pendulum that is definitely used as a reference in carrying out Judicial Activism, namely the protection of human rights, so that a person is not criminalized (substantive criminal law) and the expansion of the object of pretrial in the context of supervising the implementation of coercive measures by law enforcement officials (formal criminal law). Within the framework of the court of justice, this pendulum can also be practiced simultaneously in the criminal justice system and in the form of punishment. In exploring the forms of the defendant's mistakes through the concept of criminal responsibility, it is a form of formal criminal law field effort so that the actual material truth is revealed and becomes a consideration for the judge, and the Defendant is punished in accordance with his mistakes, which is part of his right to a fair trial. Meanwhile, in the field of substantive criminal law, in this case narcotics, particularly the deviation in the length of the sentence, the protection of human rights is realized by applying appropriate punishment with the qualification of the defendant as a narcotics abuser within the framework of judicial activism. This is done as a form of judicial oversight of the negligence of law enforcement officials, particularly public prosecutors, who do not charge defendants under articles that qualify them as drug abusers or users (Putusan Nomor 693 K/Pid/1986, n.d.; Putusan Nomor 818 K/Pid/1984; Putusan Nomor 1671 K/Pid/1996; Undang-Undang No. 35 Tahun 2009 Tentang Narkotika).

The practice of judicial activism oriented towards the protection of citizens' rights is also in line with the minimum limits of judicial activism, as stated by Atip Latipulhayat, namely the guarantee of a person's rights (including the defendant's rights), because the guarantee of a person's rights is a fundamental human right guaranteed by the Constitution (Latipulhayat, 2017, p. v), including in the ruling, is the protection of the defendant's rights in the

criminal justice system to be punished based on his guilt as a form of criminal responsibility.

The judicial activism approach in the Cassation Decision is also conceptually in line with the concept of criminal responsibility, which is the guideline for judges in deciding criminal cases within the framework of the principle of legality, namely how the Criminal Procedure Code determines a system of attribution of guilt or culpability to the defendant, which must always be obeyed by law enforcement officials, including judges, in determining the defendant's guilt as revealed in the facts of the trial and criminal proceedings where in this case (Syamsu, 2016, p. 24-25), it is embodied in Article 183 and Article 197 paragraph (1) letters d and h of the Criminal Procedure Code. Therefore, it is appropriate for Roeslan Saleh to state that the principle of legality in the framework of criminal justice places the court or judges as the main axis in dealing with issues in a criminal justice system, with the main objective of protecting the public from errors made by law enforcement officials in applying the applicable law (Saleh, 1983, p. 34).

The efforts made by the cassation panel of judges through Cassation Court Decision Number 6075/ K Pid.Sus/2025, which stated that the defendant who purchased narcotics as qualified in Article 114 of the Narcotics Law, but intended for personal consumption and used the length of punishment in Article 127 of the Narcotics Law that was not charged by the Public Prosecutor, is not, in essence, a disregard for an applicable law. However, as stated in the opinion of Leon Duguit, as quoted by I Dewa Palguna, doctrinally, a judge may set aside the application of a law that he believes to be contrary to a person's fundamental rights (Constitution). By setting aside the application of a law in a particular case, it cannot be said that the judge in *casu* is interfering with the legislative branch's authority to formulate the forms of punishment contained in the law, but rather affirming the position of the court as an institutional framework of the main branch of power that is separate, independent, and equal to the other branches of power. Therefore, the court or the judiciary cannot be forced to apply a law that it believes violates a person's human rights (Palguna, 2018, 172-173).

D. CONCLUSIONS

Judicial Activism can essentially be applied in deviating from the minimum sentencing for narcotics offenses, particularly Article 112 or Article 114 of the Narcotics Law, but with certain case characteristics. Conceptually,

judicial activism emphasizes the role of judges in overseeing the prosecution process by public prosecutors, starting from the indictment to the charges, and upholding the defendant's right to a fair trial, namely by determining whether the defendant in a narcotics case qualifies as a narcotics dealer (vide Article 114 Narcotics Law) or narcotics user/abuser (vide Article 127 Narcotics Law), if Article 127 Narcotics Law is not indicted by public prosecutor. In practice, judicial activism is applied by measuring the form of the defendant's offense as an element of criminal liability, because a conviction is not only based on the fulfillment of an element, but also on the defendant's offense as mandated by Articles 183 and Article 197 paragraph (1) letters d and h of the Criminal Procedure Code.

In addition, there are several limitations on the use of judicial activism to deviate from the minimum sentence for narcotics cases. First, before deviating from the minimum sentence, the judge must consider the forms of the defendant's wrongdoing as elements of criminal liability. Second, judicial activism can only be applied to protect the defendant's right to a fair trial by law enforcement officials and to harmonize laws that are constantly evolving in society, particularly in the application of narcotics offenses regarding the existence of Articles 112, 114, and 127 of the Narcotics Law. Third, judicial activism is intended to oversee the criminal justice system carried out by judges against public prosecutors to ensure a fair trial and can only be applied by exceeding the minimum sentence as stipulated in the principle of subsidiarity contained in the principle of legality, whereby the purpose of punishment is to resolve conflicts resulting from criminal acts and cannot be applied by exceeding the maximum sentence, as this would violate the rights of the defendant.

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