



Judicial Discretion and the Limits of Sentencing Below the Special Minimum Following the Recodification of the National Criminal Code: An Analysis of Sentencing Guidelines

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Abstract

The enactment of Law Number 1 of 2023 on the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) represents a significant development in the reform of Indonesian criminal law and the evolution of the national legal system. The new Criminal Code reinforces the principle of legality, which provides that no person may be held criminally liable or punished for an act unless such act has been clearly regulated by legislation. This study employs normative legal research using a statutory approach. The data used consist of secondary legal materials, including primary legal materials in the form of relevant legislation and secondary legal materials comprising previous studies and judicial decisions in which judges imposed sentences below the special statutory minimum in corruption cases. This study examines judicial discretion in imposing sentences below the special minimum following the recodification of the National Criminal Code. The sentencing guidelines stipulated in Article 54 paragraphs (1) and (2) of the Criminal Code should be understood as guidelines oriented toward a rehabilitative and restorative approach, with the aim of facilitating the improvement of offenders following the commission of a criminal offense. The analysis demonstrates that Article 54 functions as a sentencing guideline rather than a source of authority to alter statutory sentencing limits. Article 68 establishes the continuing legal recognition of special minimum sentences, whereas Article 54 guides the selection and justification of punishment within the applicable statutory framework. Article 54 paragraph (2) should likewise be distinguished from sentencing below the special minimum because judicial pardon concerns refraining from imposing a sentence or measure, rather than imposing a lesser sentence. Accordingly, judicial discretion remains necessary to achieve individualized and proportionate justice, but such discretion operates within the limits established by law and does not amount to unrestricted authority to depart from a special minimum in the absence of a clear legal basis. The study contributes a systematic construction of the relationship between Articles 53, 54, and 68, particularly concerning sentencing guidelines and the limits of judicial discretion, and proposes an operational



framework for sentencing decisions that promotes legality, proportionality, consistency, and the avoidance of unwarranted sentencing disparity.

Keywords: Recodification of the Criminal Code; Sentencing Below the Special Minimum; Sentencing Guidelines; Judicial Discretion

A. Introduction

Indonesia is a state governed by the rule of law, as expressly provided in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). The characterization of Indonesia as a state governed by law demonstrates that all aspects of national, state, and social life must be based on law. This means that law occupies a superior position and that all persons, including government institutions and citizens, are subject to the law (Anggriani, 2012). The superior position of law establishes the legal order as the fundamental framework governing social, national, and state life.

The enactment of Law Number 1 of 2023 on the Criminal Code (KUHP) constitutes an important milestone in the reform of Indonesian criminal law and the development of the national legal system. The recodification of the National Criminal Code strengthens the principle of legality, which requires that no criminal act may be punished unless it is clearly regulated by legislation.

The new Criminal Code constitutes a significant legislative reform reflecting the development of Indonesian criminal law and replacing the former Criminal Code, which originated from the Dutch legal system, namely the *Wetboek van Strafrecht* (WvS). Law Number 1 of 2023 officially entered into force in Indonesia on 2 January 2026.

The reform of the Criminal Code has fundamentally transformed the paradigm of sentencing by shifting from a predominantly retributive approach, which emphasizes punishment and retaliation, toward a more comprehensive conception of justice



encompassing corrective, restorative, and rehabilitative dimensions. As a consequence, imprisonment is no longer positioned as the primary response in every criminal case but is regarded as a measure of last resort (*ultimum remedium*), particularly in relation to non-violent offenses and offenses producing limited social harm (Purbhawadi et al., 2026).

Under the former Criminal Code, the concept of a special minimum sentence was not expressly recognized. The former Criminal Code only provided for a general minimum sentence of one day, applicable to criminal offenses generally (Ali, 2016). Law Number 1 of 2023 expressly recognizes the existence of special minimum sentences in Article 68 paragraph (2), which provides that a determinate term of imprisonment shall be imposed for a maximum of 15 consecutive years and a minimum of one day, unless a special minimum is otherwise provided by law.

The inclusion of special minimum sentences in legislation outside the Criminal Code, including legislation concerning corruption and terrorism, is intended, among other purposes, to prevent excessive sentencing disparities, both in cases involving the same offense and in cases involving offenses of comparable seriousness. Molly Cheang defines sentencing disparity as the imposition of unequal sentences for the same offense or for offenses of comparable seriousness without a clear and justifiable basis (Amari, 2013).

Harkristuti Harkrisnowo further identifies several forms of sentencing disparity, including: (a) disparity between the same offenses; (b) disparity between offenses of comparable seriousness; and (c) disparity between sentences imposed by different judicial panels for the same offense (Amrun, 2018).

The regulation of special minimum sentences for corruption offenses is intended to strengthen the enforcement of criminal law in relation to particularly serious offenses. Nevertheless, the effectiveness of law enforcement cannot be assessed solely on the basis of the existence of statutory provisions.



The sentencing guidelines introduced under the new Criminal Code are expected to address longstanding problems in criminal sentencing, including sentencing disparity. Unjustified disparities in sentences imposed for similar cases may undermine public confidence in the criminal justice system and the performance of law enforcement institutions as a whole (Latifah & Hairi, 2024).

Prior judicial decisions demonstrate that judges have, in certain cases, imposed sentences below the applicable special minimum. One such case is Decision Number 1/Pid.Sus-TPK/2019/PN Yyk, in which the judge imposed a sentence below the statutory special minimum in a corruption case. The judge's *ratio decidendi* was based, among other considerations, on the defendant's relatively low degree of culpability and the relatively small amount involved in the unlawful levy, amounting to Rp58,090,000, which was below Rp100,000,000 (Shafira et al., 2014).

Another case was Decision Number 150/Pid.B/2007/PN Bantul concerning Kusrianto, involving corruption in a post-earthquake housing project in Bantul Regency with a project value of Rp120,000,000. The case was prosecuted under Article 2 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of Corruption. The decision took into account considerations of justice and the amount of loss involved, which was stated to be Rp9,000,000. The sentence was imposed with the aim of maintaining a deterrent effect while avoiding excessive sentencing disparity (Haris, 2017).

Judicial discretion in imposing sentences below a special statutory minimum was not expressly regulated under the former Criminal Code. In practice, however, judges sometimes imposed sentences below the special minimum by prioritizing substantive justice over formal legal certainty. Accordingly, this study examines the regulation and scope of special minimum sentences following the enactment of the new National Criminal Code, particularly Law Number 1 of 2023.



This study employs normative legal research using a Statutory approach is used to examine the legal relationship among Articles 53, 54, and 68 of Law Number 1 of 2023, together with Law Number 1 of 2026 on Criminal Penalty Adjustment and sectoral legislation that continues to contain special minimum sanctions. The case approach is used to examine judicial reasoning concerning sentences below special minimums before the recodification and to identify the early post-recodification application of judicial pardon.

The primary legal materials consist of Law Number 1 of 2023, Law Number 1 of 2026, relevant sectoral criminal legislation, Supreme Court Regulation Number 1 of 2020 concerning sentencing guidelines for Articles 2 and 3 of the Corruption Eradication Law, and relevant judicial decisions. The secondary legal materials consist of books, journal articles, dissertations, and authoritative judicial commentary concerning sentencing guidelines, judicial discretion, special minimum sentences, and judicial pardon.

The legal materials are analyzed through grammatical, systematic, and conceptual interpretation. Grammatical interpretation examines the wording of Articles 53, 54, and 68. Systematic interpretation places those provisions within the structure of the National Criminal Code and related legislation. Conceptual interpretation is used to distinguish judicial discretion, sentencing guidelines, judicial pardon, and departure from a statutory minimum. The analysis then compares the resulting normative construction with the reasoning found in the selected judicial decisions.

B. Discussion

The judge's decision to impose a criminal sentence below the special minimum is based on a conflict between two principles, namely legal certainty and justice. In certain cases, as mentioned in the introduction, the relatively small amount of loss becomes a legal consideration or *ratio decidendi* for the judge in sentencing the defendant to imprisonment below the special minimum provision stipulated in the applicable law.



In carrying out their function as law enforcers, judges do not act solely for the purpose of achieving legal certainty as reflected in the decision rendered, but also for the purpose of achieving just legal certainty in such decision. In rendering decisions, judges do not merely act as law enforcers but also as holders of applicative policy, because such applicative policy originates from “the formulation of the thoughts of the legislators as embodied in legislation, which will also determine how law enforcement will subsequently be implemented” (Amza, 2021).

“The provision as referred to in Article 1 paragraph (1) does not prejudice the applicability of the living law in society, which determines that a person may be subject to criminal punishment even though the act is not regulated in this Law.” The former Criminal Code, which was a legal product of the Netherlands, namely the *Wetboek van Strafrecht* (WvS), only established general maximum, special maximum, and general minimum sentences. Article 12 paragraph (2) of the Criminal Code provides that a determinate term of imprisonment shall be imposed for a minimum of 1 (one) day and a maximum of 15 (fifteen) consecutive years.

Subsequently, the new Criminal Code, namely Law Number 1 of 2023, normatively recognizes the existence of special minimum sentences as regulated in Article 68. Imprisonment for a determinate period shall be imposed for a maximum of 15 (fifteen) consecutive years or a minimum of 1 (one) day, unless a special minimum is otherwise determined (Criminal Code, 2023).

Special minimum sentences for narcotics offenses have been abolished. This has been adjusted through Law Number 1 of 2026 on Criminal Penalty Adjustment. The provision of Article 609 of the Criminal Code, which replaces the functions of Articles 112, 117, and 122 of Law Number 35 of 2009 on Narcotics, has been amended so that the sanction now provides only: “shall be punished with imprisonment for a maximum of 12 years and/or a fine of category VI,” with no longer any special minimum sentencing limit



such as the phrase “minimum.” Likewise, Article 610 of the Criminal Code, which regulates narcotics offenses, does not contain any special minimum sentence and only provides a maximum sanction.

This means that judges adjudicating narcotics offenses after the enactment of the new Criminal Code have greater flexibility in determining the length of the sentence compared with the period before the enactment of the Criminal Code, when special minimum sentencing provisions were still applicable.

This differs from other special criminal offenses, such as corruption, money laundering, terrorism, and serious human rights violations, for which special minimum criminal sanctions have not been abolished in the relevant legislation. This is based on the mandate of Article I paragraph (2) of Law Number 1 of 2026.

In handling other criminal cases apart from corruption offenses, judges previously did not have sentencing guidelines before the new National Criminal Code came into force. Eddy O.S. Hiariej and Topo Santoso provide an annotation concerning sentencing guidelines, namely a guide or framework intended to be used by judges in determining the punishment to be imposed upon a defendant who has been proven guilty in a criminal case (Eddy O.S. Hiariej and Topo Santoso, 2025).

Sentencing Guidelines are expressly regulated in Article 54 of the Criminal Code:

- (1) In sentencing, the following shall be taken into consideration:
 - a. the form of culpability of the offender;
 - b. the motives and purposes for committing the criminal offense;
 - c. the state of mind of the offender;
 - d. whether the criminal offense was committed intentionally as planned or without planning;
 - e. the manner in which the criminal offense was committed;
 - f. the attitude and actions of the offender after committing the criminal offense;
 - g. the offender's life history, social circumstances, and economic circumstances;



- h. the influence of the punishment on the future of the offender;
- i. the influence of the criminal offense on the victim or the victim's family;
- j. forgiveness from the victim and/or the victim's family; and/or
- k. the legal values and justice prevailing in society.

Article 54 of the Criminal Code explicitly introduces sentencing guidelines as one of the important elements in determining criminal sanctions against defendants. There is the phrase “In sentencing, the following shall be taken into consideration.” This is elaborated in Article 54 paragraph (1) of the Criminal Code, meaning that the word “shall” in this provision places the provision as a mandatory provision.

According to Purnadi Purbacaraka and Soerjono Soekanto, legal norms are divided into two main characteristics, namely imperative and facultative. Imperative means an order that must be obeyed *a priori*, whether in the form of an instruction or prohibition. Facultative, on the other hand, means that it is not binding or mandatory to be obeyed *a priori*. The imperative nature of a legal norm is commonly referred to as coercive (*dwingenrecht*), whereas the facultative nature is distinguished between regulatory legal norms (*regelendrecht*) and supplementary legal norms (*aanvullendrecht*). Sometimes, there are also legal norms of a mixed nature, which are simultaneously coercive and regulatory (MariNews, 2025b).

Therefore, according to the author, under the sentencing guidelines contained in Article 54 of the Criminal Code, judges are required to consider matters deemed necessary in accordance with the circumstances of a particular case as grounds for determining the severity of the sanction to be imposed upon the defendant.

The formulation of Article 54 paragraph (2) of the National Criminal Code emphasizes the importance of considerations of justice and humanity in the criminal justice process. This emphasizes that in determining punishment for a person involved in a criminal offense, the court should not only consider how serious the act was, but also consider other



factors, such as the personal circumstances of the offender, the circumstances at the time the criminal offense was committed, and matters that occurred thereafter.

The formulation of Article 54 paragraph (2) of the National Criminal Code emphasizes the importance of considerations of justice and humanity in the criminal justice process. This underscores that in determining punishment for a person involved in a criminal offense, the court should not only consider the seriousness of the act, but also consider other factors, such as the personal circumstances of the offender, the circumstances at the time the criminal offense was committed, and matters that occurred thereafter (MariNews, 2025a).

The sentencing guidelines contained in Article 54 paragraph (2), particularly the provision that such circumstances may be taken into consideration as a basis for refraining from imposing a sentence or measure by considering justice and humanity, do not automatically constitute a justification for judges to impose a sentence below the special minimum.

Sentencing guidelines are based on the principle that the criminal justice system has particular objectives. Therefore, criminal threats function as the principal means of realizing the objectives of the system as a whole. Sentencing guidelines (*guidance of sentencing*) constitute directions for judges in imposing and applying criminal sanctions or constitute judicial or adjudicative guidance for judges (Latifah & Hairri, 2024).

Regarding Judicial Discretion in deciding cases below the special minimum following the enactment of Law Number 1 of 2023 on the Criminal Code, the sentencing guidelines contained in Article 54 paragraphs (1) and (2) do not allow judges to freely decide cases beyond the provisions concerning the special minimum for criminal offenses that continue to contain special minimum criminal sanctions, such as corruption, money laundering, terrorism, and serious human rights violations.



Article 54 of Law Number 1 of 2023 requires judges to consider various factors in sentencing, such as the form of culpability, motives, the personal circumstances of the offender, social circumstances, the impact on the victim, and the legal values prevailing in society. Paragraph (2) introduces the concept of judicial pardon (*rechterlijke pardon*), namely the possibility for judges not to impose a sentence or measure under certain circumstances.

However, the formulation of Article 54 does not contain a norm granting judges the authority to reduce or depart from the special minimum criminal threat established by legislation. Accordingly, the function of Article 54 is to provide guidance for judges in selecting a sentence, not to alter the sentencing limits established by the legislature.

In theory, this provision constitutes a sentencing guideline, rather than sentencing authorization. This means that judges are provided with guidance concerning how to exercise discretion, not authority to create or alter criminal threats, even though judges are not merely the “mouth of the law” (*la bouche de la loi*).

Articles 53 and 54 of the National Criminal Code introduce sentencing guidelines (*sentencing guidelines*) in order to minimize disparities in judicial decisions. In particular, Article 53 paragraph (1) requires judges to uphold both law and justice by exploring the fundamental values underlying the norm and the sense of justice prevailing in society. The requirement for judges to adopt a progressive approach is further strengthened by Article 53 paragraph (2), which instructs judges to prioritize justice over merely textual legal certainty when a conflict arises between the two.

The interpretation of Article 54 cannot be separated from Article 68 of the Criminal Code. Article 68 continues to provide that the minimum term of imprisonment is one day unless a special minimum is prescribed. This formulation demonstrates that the legislature continues to recognize the existence of special minimum sentences as part of the national sentencing system. Therefore, when sectoral legislation, such as the Corruption Eradication



Law, the Terrorism Law, or the Money Laundering Law, continues to establish a special minimum criminal threat, judges remain bound by that limit. Consequently, Article 68 determines the legal boundary of punishment, while Article 54 determines how the punishment is selected within that boundary. Thus, the scope of judicial discretion operates within the sentencing range, not outside that range.

The relationship between Article 54 and Article 68 constitutes one of the main issues in determining the limits of judicial discretion. Article 54 regulates the factors that must be considered in sentencing, whereas Article 68 regulates the general framework of determinate imprisonment, namely a maximum of 15 years and a minimum of 1 day, unless a special minimum is prescribed (Law Number 1 of 2023, Articles 54 and 68).

A systematic reading of Articles 53, 54, and 68 indicates that the provisions perform different legal functions. Article 53 establishes the judicial duty to uphold law and justice and to consider the values underlying the law and justice prevailing in society. Article 54 identifies the factors that must be considered in sentencing and, in paragraph (2), provides a basis for refraining from imposing a sentence or measure under specified circumstances. Article 68, by contrast, defines the general framework for determinate imprisonment and expressly preserves the possibility of a special minimum where such a minimum is prescribed by law.

The distinction may therefore be formulated as follows: Article 53 concerns the interpretive orientation of adjudication; Article 54 concerns the considerations and mechanisms relevant to sentencing; and Article 68 identifies the statutory framework within which imprisonment is imposed. The existence of discretion under Articles 53 and 54 does not, without an express authorization, transform those provisions into a judicial power to amend a criminal threat established by the legislature.

This construction is particularly important in cases where the applicable offense continues to carry a special minimum. If Article 54 were interpreted as an independent



authorization to go below that minimum, the phrase in Article 68 preserving a special minimum would be substantially deprived of effect. A systematic interpretation should instead give effect to both provisions: Article 54 requires individualized consideration, while Article 68 preserves the statutory boundary. Thus, mitigating circumstances may affect the choice and severity of punishment where the statutory framework permits such choice, but they do not automatically extinguish a special minimum.

Article 53's preference for justice over merely formal legal certainty should also be understood within this framework. The provision strengthens substantive adjudication by requiring judges to interpret and apply the law in a manner responsive to justice. It does not follow, however, that every judicial perception of substantive justice constitutes a legal power to disregard an express minimum. A departure from a statutory sentencing limit requires a clear legal basis because criminal sanctions implicate the principle of legality and the separation of institutional functions between legislative norm-making and judicial adjudication.

Accordingly, Article 53 cannot legitimately be invoked in isolation as a basis for imposing a sentence below a special minimum. Article 53 may guide the interpretation and application of the law, while Article 54 supplies the sentencing considerations and, where its requirements are met, the mechanism of judicial pardon. Neither provision should be read as silently delegating to judges the authority to reduce a statutory minimum.

This becomes increasingly relevant following the enactment of Law Number 1 of 2026. The law abolishes special minimum sentences in legislation outside the Criminal Code, except for four groups of criminal offenses. The Supreme Court confirms that special minimum sentences remain applicable to serious human rights violations, terrorism, corruption, and money laundering (Law Number 1 of 2026 on Criminal Penalty Adjustment, 2026).



Consequently, the judge's analysis under Article 54 must first identify whether the criminal offense under consideration still carries a special minimum. If there is no special minimum, the scope of judicial discretion becomes broader. Conversely, where a special minimum remains applicable, the factors under Article 54 cannot automatically be used to eliminate that minimum limit.

Thus, the relationship between Article 54 and Article 68 can be formulated as follows: Article 54 determines how judges select the punishment, whereas Article 68 determines the framework of the available sentencing limits. Where a special minimum remains applicable, the sentencing guidelines under Article 54 cannot be interpreted as granting authority to abolish that limit.

This view differs from the understanding that judges are merely the “mouth of the law.” Judges continue to have an important function in interpretation. However, such freedom is not identical to the authority to create new criminal norms. Judges may give meaning to norms and apply them to concrete facts, but should not alter criminal sentencing limits without a clear legal basis.

Article 54 paragraph (2) of the National Criminal Code introduces a concept that was previously not explicitly recognized in the former Criminal Code, namely judicial pardon or *rechterlijk pardon*. The provision states that the triviality of the act, the personal circumstances of the offender, the circumstances at the time the criminal offense was committed, and subsequent circumstances may constitute grounds for consideration in refraining from imposing a sentence or measure by taking into account justice and humanity (Law Number 1 of 2023, Article 54 paragraph (2)).

The concept must be clearly distinguished from sentencing below the special minimum. Judicial pardon is not a sentence imposed below the special minimum. In the continental legal tradition, particularly in the Netherlands, the concept of *rechterlijk pardon* or judicial pardon developed as a mechanism that allows judges, under certain



circumstances, not to impose a criminal sentence or measure. This concept allows judges to grant pardon even though the defendant has been proven to have committed a criminal offense, based on particular humanitarian considerations (Abdullah et al., 2026).

Accordingly, there is a fundamental distinction. First, in sentencing below the special minimum, the judge continues to impose a criminal sentence, but the amount of the sentence imposed falls below the minimum established by law. Second, under judicial pardon, the judge does not impose a criminal sentence or measure even though the defendant is declared guilty.

The application of judicial pardon must also be undertaken carefully. Not every mitigating circumstance automatically results in judicial pardon. Judges must still consider the triviality of the act, the personal circumstances of the offender, the circumstances at the time the criminal offense was committed, and subsequent circumstances. In addition, judges must explain the considerations of justice and humanity concretely in their decisions.

Judicial pardon must be separated conceptually and legally from sentencing below a special minimum. In a sentence below the special minimum, the court imposes a criminal sentence but fixes its amount below the statutory floor. In judicial pardon, the defendant is found guilty but the court refrains from imposing a sentence or measure. The legal consequences are therefore different.

The distinction is reflected in the early post-recodification practice reported by the Supreme Court. In Decision Number 412/Pid.B/2025/PN Grt, the defendant was found legally and convincingly guilty of assault, but the court did not impose a criminal sentence or measure (Prasetyo, 2026). This decision is therefore better understood as evidence of the operationalization of judicial pardon under Article 54 paragraph (2), rather than as evidence that judges possess a general power to impose sentences below statutory minimums.

This practice demonstrates that judicial pardon has its own operational scope within the national sentencing system. Therefore, this concept should not be used to justify every



decision imposing a sentence below the special minimum, but rather should be positioned as a separate mechanism for achieving justice and humanity.

Judicial freedom is a fundamental principle of judicial power. However, such freedom cannot be understood as absolute freedom. In criminal cases, judges indeed have the authority to assess facts, evidence, the degree of culpability, the circumstances of the offender, and the impact of the criminal offense. Nevertheless, such assessment must be conducted within the applicable legal framework.

The National Criminal Code expands the scope of judicial consideration through Articles 53 and 54. Judges are not only required to apply norms but are also required to uphold justice. This demonstrates the strengthening of the substantive aspect of sentencing.

Judicial freedom in this context can be distinguished into two aspects. First, freedom in assessing facts and concrete circumstances. Second, freedom in determining the punishment. The first form of freedom is relatively broad because judges must determine, based on evidence, whether the defendant is guilty and how the characteristics of the conduct should be assessed. The second form of freedom is more limited because it must follow the types and limits of punishment determined by law.

This distinction is important in explaining the position of judges with respect to special minimum sentences. Judges may consider that the defendant played a minor role, did not enjoy the principal benefit, admitted wrongdoing, returned the loss, had particular social circumstances, or had particular personal conditions. However, where the law continues to establish a special minimum, such considerations do not automatically grant judges authority to depart from that limit.

Research by Oheo K. Haris concerning the application of sanctions below the special minimum demonstrates a debate between a positivist approach and an approach emphasizing justice. The research concludes that judges, in principle, may not impose a



sentence below the minimum standard because judges are bound by statutory provisions that clearly establish the minimum limit (Haris, 2017).

On the other hand, judicial practice before the National Criminal Code demonstrated that there were decisions imposing sentences below the special minimum by considering the concrete circumstances of the case. One study discussing this is Decision Number 150/Pid.B/2007/PN Bantul concerning Kusrianto. The study records that the defendant was sentenced to two years' imprisonment in a corruption case involving a post-earthquake housing project with a project value of Rp120 million and a stated loss of Rp9,000,000 (nine million rupiah). The considerations were associated with a sense of justice, the amount of loss, deterrent effect, and efforts to avoid sentencing disparity (Haris, 2017).

This example is important not to state that such practice is automatically correct under the current law, but rather to demonstrate the historical issue concerning the relationship between judicial freedom and special minimum sentences. After the National Criminal Code and the Criminal Penalty Adjustment Law came into force, the issue must be analyzed based on the new legal framework.

In the context of corruption, sentencing guidelines have also been developed through Supreme Court Regulation Number 1 of 2020 concerning Sentencing Guidelines for Articles 2 and 3 of the Corruption Eradication Law. This constitutes an important milestone in the Supreme Court's efforts to address unwarranted sentencing disparities in corruption cases (Pudjoharsoyo, 2026).

Accordingly, judicial freedom should be directed toward producing proportional sentencing, rather than unlimited sentencing. A good decision is not necessarily the harshest or the most lenient decision, but a decision that is able to explain the relationship between the degree of culpability, the consequences of the conduct, the circumstances of the offender, the objectives of sentencing, and the legal provisions applied.



Special minimum sentences were initially established to reduce sentencing disparity, strengthen deterrence, and demonstrate a stricter criminal policy toward certain crimes. If Article 54 were interpreted as a basis for imposing sentences below the special minimum, the function of the special minimum would lose its meaning because the limits established by the legislature could be disregarded through judicial consideration.

Furthermore, Article 54 paragraph (1) of the National Criminal Code contains non-legal indicators that judges must consider before imposing punishment, including (Aripkah et al., 2026):

1. The subjective aspect of the offender, consisting of motive, state of mind (intent/negligence), life history, personal circumstances, and remorse.
2. The objective aspect of the conduct, including the manner in which the act was committed, the consequences produced, and the reaction of society.
3. The prospective aspect, namely the influence of the punishment on the future of the offender. This aspect often conflicts with special minimum criminal provisions.

Reviewing cases involving sentences imposed below the special minimum, Supandriyo's dissertation entitled *The Principle of Judicial Freedom in Imposing Sentences for Criminal Offenses Carrying Special Minimum Sentences* concludes that the way judges perceive and apply their freedom is strongly influenced by the legal paradigm they adopt, both from ontological, axiological, and epistemological dimensions.

In broad terms, judicial interpretations are divided into two main views:

1. The First View (Rigid/Textual): Most judges consider that the principle of freedom in deciding cases remains limited by the rules concerning special minimum sentences. Therefore, judges must adhere to the minimum limit and are prohibited from issuing decisions that deviate from it.
2. The Second View (Flexible/Progressive): Other judges consider that judicial freedom should not be interpreted rigidly. In this regard, judges have room or flexibility



to adjust sentencing in order to achieve substantive justice for the defendant (Supandriyo, 2018).

Furthermore, according to Supandriyo's dissertation, in general, the differing views of judges in deciding cases involving special minimum criminal threats are divided into two:

1. The First Group: This group considers that the special minimum limit is absolutely binding. Judges must comply with the provision and are not permitted to impose a sentence below the minimum limit established by law.
2. The Second Group: This group considers that judges have freedom and are not merely the “mouth of the law” (*la bouche de la loi*). Therefore, the minimum rule should not be interpreted rigidly in order to uphold justice.

Thus, the imposition of sentences below the special minimum is essentially case-specific, depending on the considerations and specific conditions of each case.

Bagir Manan describes this situation as a consequence of the limited scope of written law or legislation, which is considered to always contain inherent defects (*natural defects*) and artificial defects (*artificial defects*). This is because its formulation is merely a snapshot of the political, economic, social, cultural, or defense and security factors that are most influential at the time of its formation. Therefore, it can easily become “out of date” when compared with rapid changes in society (Sufriadi, 2014).

The Criminal Code that had been in force for so long (WvS) did not contain general sentencing objectives and sentencing guidelines (*Straftoemetingsleiddraad*), namely guidelines formulated by the legislature containing principles that should be considered by judges when imposing sentences. Meanwhile, what existed was only sentencing rules (*Straftoemetingsregels*) (Latifah & Hairi, 2024).

The existence of sentencing guidelines contained in the current new Criminal Code, such as Article 54 paragraphs (1) and (2) of the Criminal Code, constitutes a form of



progressive law that reflects humane rules. Law is viewed not as retribution (*retributive*) but as restoration (*rehabilitative*).

The rules of the new Criminal Code use the relative theory, in which the basis lies in the objectives of punishment itself. The justification for this theory is that punishment is imposed not because a person commits a crime (*quia peccatum est*), but so that a person does not commit a crime (*ne peccetur*).

C. CONCLUSION

The recodification of Indonesian criminal law strengthens the role of judicial reasoning in sentencing through Articles 53 and 54 of Law Number 1 of 2023. Nevertheless, the strengthening of judicial consideration should not be equated with an unrestricted judicial power to alter statutory sentencing limits. Article 53 provides an interpretive orientation toward law and justice, while Article 54 establishes mandatory sentencing considerations and a distinct mechanism of judicial pardon. Article 68 preserves the statutory recognition of special minimum sentences.

The systematic relationship among these provisions leads to the conclusion that Article 54 is primarily a sentencing guideline rather than an independent source of authority to depart from a special minimum, such guidelines do not mean that judges are authorized to impose sentences below the applicable special minimum. Rather, they serve as a framework for judges in adjudicating criminal cases in order to prevent excessive sentencing disparities while considering not only the defendant's culpability but also humanitarian factors, including the offender's motives, purposes, state of mind, the consequences of the offense, and the response of society.

Judicial pardon must be treated separately. Its legal structure permits a judge, under the conditions provided by Article 54 paragraph (2), to refrain from imposing a sentence or measure despite a finding of guilt. It is therefore not equivalent to imposing a sentence below the special minimum. The early post-recodification application of judicial pardon



demonstrates that the new Criminal Code provides a mechanism for individualized and humane justice without necessarily requiring judges to modify statutory sentencing floors.

The practical implication is that judges should structure sentencing decisions in a transparent sequence: identify the applicable law and special minimum; assess the Article 54 factors, determine the appropriate sentence within the lawful range, and, where judicial pardon is considered, explain why the statutory conditions for non-imposition are satisfied. Such a framework promotes legality, proportionality, consistency, and the prevention of unwarranted sentencing disparity.

RECOMMENDATIONS

Further development of more operational sentencing guidelines is necessary to ensure that the factors stipulated in Article 54 of the National Criminal Code can be applied consistently by judges. Such guidelines are particularly important for offenses that continue to be subject to special minimum sentences, including corruption, terrorism, money laundering, and serious human rights violations.



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