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Key Finding: Result of a Qualitative Study of Judicial Perspectives on the Sentencing of Minor Drug Offenders in Indonesia: Structural Inequality

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Abstract

Although there have been a number of recent developments in criminal justice research on the topic of structural inequality sentencing, much work is needed to explore the judicial perspective. Researchers use this paper illustrates how a recent study used qualitative semi-structure interviews to study current judicial perspectives on sentencing of minor drug offenders in Indonesia. This paper reports a recent study of judicial perspectives when sentencing minor drug offenders in Indonesia. Firstly, it reviews existing sentencing option and recent development that motivated me to explore the issues of justice among Indonesian Judges. Secondly, it reports the procedures and method used in the recent study. Thirdly, it reports the appropriateness of the methodology chosen, and how it may influence the finding of the study. Finally, it reports the judicial perception on structural inequality.

Keywords

qualitative study, background, methodology, structural inequality

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Key Finding: Result of a Qualitative Study of Judicial Perspectives on the Sentencing of Minor Drug Offenders in Indonesia: Structural Inequality

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Although there have been a number of recent developments in criminal justice research on the topic of structural inequality sentencing, much work is needed to explore the judicial perspective. Researchers use this paper illustrates how a recent study used qualitative semi-structure interviews to study current judicial perspectives on sentencing of minor drug offenders in Indonesia. This paper reports a recent study of judicial perspectives when sentencing minor drug offenders in Indonesia. Firstly, it reviews existing sentencing option and recent development that motivated me to explore the issues of justice among Indonesian Judges. Secondly, it reports the procedures and method used in the recent study. Thirdly, it reports the appropriateness of the methodology chosen, and how it may influence the finding of the study. Finally, it reports the judicial perception on structural inequality.

Keywords: qualitative study, background, methodology, structural inequality

Introduction

This paper reports a recent study of judicial perspectives when sentencing minor drug offenders in Indonesia. Firstly, it reviews existing study on the sentencing court and discuss the factors found to be influences in sentencing elsewhere. Secondly, it reports the procedures and method used in the recent study. Thirdly, it reports the appropriateness of the methodology chosen, and how it may influence the finding of the study. Finally, the judicial perception on structural inequality drives moral responsibility of the panel judges will be presented in a Result Section.

Current Sentencing in Indonesia

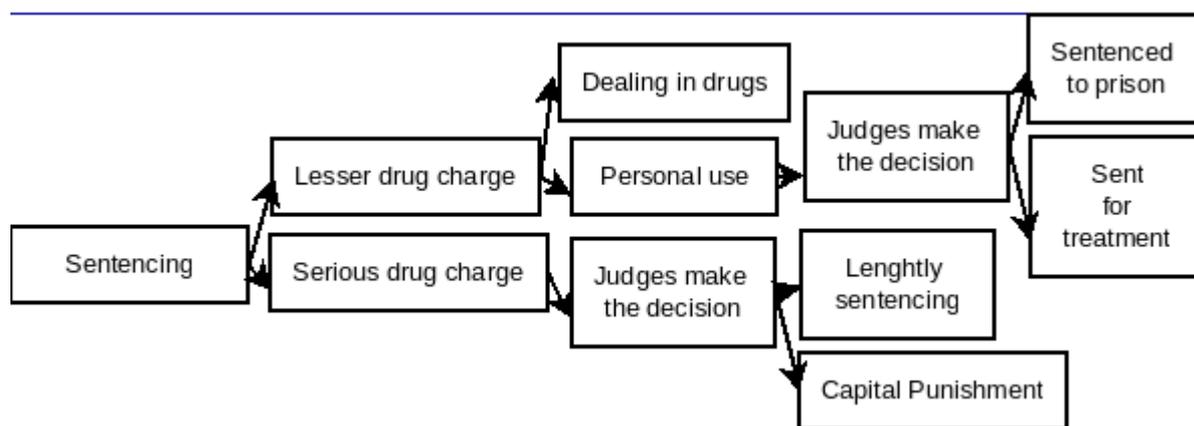
Judges use Drug Law 35/2009 to sentence offenders convicted of having issues of drug use. Throughout this paper, the term medical rehabilitation is used to indicate the medical approach to treating the person who become drug addicts and victims of abuse of drugs (Law 35/2009 Article 1[16]). The term social rehabilitation relates to a social approach to recovery so that the person in recovery can take part in social activity (Law 35/2009 Article 1(17)). The diagram below (Figure 1) illustrates the sentencing options available to minor drug offenders.

Figure 1 illustrates that the Law 35/2009 allows for the use of judicial discretion of sentencing drug-dependent offenders who are found guilty of drug possession (Indonesia Narcotics Law 35/2009 Article 103). Should the drug user be considered to be dependent on drugs, the judge may decide whether or not to send the drug user for treatment (Indonesia Narcotics Law 35/2009). The Law provides opportunities for the drug misuser to undergo rehabilitation (Law 35/2009 Article 54). However, in reality it becomes a challenge to obtain an assurance of rehabilitation. This challenge is because the narcotics law does not distinguish

between selling and using. The law enforcement interpretation of selling has been narrowed down sometimes to distributing and delivering and, at times, has been widened to buying for personal use (Mulyadi, 2012). This blurred boundary between selling and using can be considered a challenge for the panel judge's interpretation of justice (Mustafa, 2021a).

Figure 1

The Sentencing Options Available to Minor Drug Offenders in Law



Recent Development

In recent years, changes in the Supreme Court acknowledgement of the Join Agreement of six ministries (SKB) and the increasing number of drug users in the penal system shaped suitable conditions for the use of sentencing for rehabilitation. In mid-2014, the previous National Anti-Narcotics Agency of the Republic of Indonesia (BNN) head was replaced by the new BNN head who declared a new “war on drugs.” This shift of BNN policy and the Supreme Court directive motivated me to explore the issues of justice among Indonesian Judges¹.

Objectives

The following aims were identified for this research:

1. To explore the factors, according to judges, influencing them when sentencing minor drug offenders in Indonesian courts.
2. To explore the Indonesian court judges' stated aims when sentencing minor drug offenders.

Positionality

Regarding positionality, I² adopted outsider/insider position. As an outsider, I considered it would be important to establish my status as a researcher and to respect the study participants. I never sought the responsibility of sitting on the bench or making the judgement

¹ The study did not take place in 2017 when the apparent political desire was the execution of suspected drug related offenders, but rather was conducted in mid-2014 when the apparent political desire was to put forward the war on drugs agenda.

² I have chosen to include myself/experience in discussing the research so have opted to use “I” to refer to my involvement as researcher with experience as a judge.

of the case. I was ensuring to consider the implication of the finding and its contribution to knowledge. In order to persuade the participants, I changed my approach to explain carefully about my position as a doctoral researcher in order to generate an understanding of their perceptions as well as an appreciation of their views and also, how it would help me to complete my PhD. Although the Indonesian government has funded my research, they did not determine the formulation of my research question and the research design. The formulation of the research question resulted from my own reflection. I was also aware of the need to adhere to the principle of independent research. I take responsibility for the interpretation of the data and for presenting an argument reflexively and contextually. My claim to such epistemological privilege is based on a careful reconstruction and retracing of the route by which I arrived at this interpretation (Mason, 2002). In doing so, data analysis, data generation, and theory were developed concurrently in a dialectical process. Also, I explained to the participants my position as a researcher and as someone who wanted to know more about the subject area. Then, the participant Judge introduced me to the audience in the Courtroom. After the court hearing ended, the participant Judge asked me to comment on the panel's Courtroom "performance." I am aware that the participants wanted me to evaluate their performance. This might have occurred because of the participants regarding me as a former judge who is already familiar with the procedural aspect of a court hearing and due to studying abroad may be expected to improve the procedural aspect of the court hearing. I explained that I am not in the position to evaluate the participants' performance.

As an "insider," I reflected on my professional background as practising judge in rural court Indonesia. Access issues may be eased by the researcher's prior working experience in the court, the management of contact in the field work, and demonstrating a basic understanding of organizational routine and culture. Also, the Indonesian Government funded my study. Perhaps, my professional background and sources of funding for the study were determinant to the first impression with study participants which may pose challenges for the participants to say "no" to my study invitation.

The current work is the first stage of the study and deploy of qualitative semi-structure interviews with the participating judges in rural and urban courts in Indonesia to address the above aims. In this paper, I describe the procedures I used to conduct the semi-structured interviews. For the purpose of the study, drug sentencing was defined as the decision-making of all the panel judges. In Indonesia, the panel of three judges preside over a case (Mustafa 2021b). In contrast to a judge presiding over a case individually. In the course of the fieldwork, discussion of other aspects of drug sentencing were explored where they were relevant to the research questions.

Methods

The Choice of Methods

Regarding the choice of methods, I chose a qualitative study as a method to explore the contemporary judiciary. As Mason (2002) suggested that across the international jurisdiction, the contemporary phenomenon can be effectively explored through a qualitative study. For example, the qualitative study in the USA contexts was useful to understand the judges' perspective about managing the court's caseload at the lower criminal court (Feeley, 1992). However, it is noteworthy that in the USA context, the judge appeared too focused on managing judicial tasks. This situation is perhaps qualitatively different from the Indonesian context, where I felt that the judges are multi-tasking and not only managing judicial tasks but managing ceremonial tasks. Thus, I considered this qualitative study as the most appropriate method to explore the contemporary judiciary under the social conditions in which they operate, in this

case in Indonesia (Hutton, 2006). The qualitative was carried out in two District Courts, which I termed the urban court and the rural court based on geographical terms. These courts, located on two different islands across the country of Indonesia, revealed essential differences concerning their socio-economic condition and their respective available resources. These differences revealed the availability of and access to treatment for offenders. These differences also generated the social context and, ultimately, the judiciary's contextualised perspectives on sentencing minor drug offenders. The implication of the findings from the urban court and the rural court was drawn to conclude the study.

Judges Interview

I carried out the judges' interviews on a face-to-face semi-structured basis. I arranged the interviews in advance, and each lasted between 27 and 97 minutes. My interview guides were based on the question of the study. My observations of the sentencing hearings by a panel of judges were mostly carried out after the interviews. As Anleu and Mack (2017) suggested that the observational data was useful to add insight to the interview data and to illuminate the arrangement of the routine court hearing. For example, the observational study in the Australian contexts was useful to add a nuanced insight to the individual judges' performance at the court hearing (Anleu & Mack, 2017). However, it is noteworthy that in the Australian context, the judges acted in their capacities not as a member of the panels. Since the Australian judges' sit alone at the bench, their statement in the courtroom might reflect the individual judges' attitude toward the offender. This is perhaps different with the Indonesian context where I considered that during the observations, the judges acted in their capacities as members of the panel, and therefore, the judges' statements in the courtroom during sentencing might reflect the panel's attitude towards the offender. For the purpose of my study, observation of the court hearing would generate an insight at the panel performance at their interaction with the offenders at the courtroom. Sometimes, my observations were made between the interviews since these enabled me to discuss the motivation behind their statements at the court hearing. The observations were not aimed to assess the judges' body language but to assess their stated aims in the courtroom when sentencing minor drug offenders. I carried out face-to-face interviews with the urban court participants, whereas interviews with two rural court participants who had relocated to another jurisdiction were carried out using telephone interviews because those participants were located far away, and therefore, it became a challenge to reach them. As described in Hay-Gibson (2009), telephone interviews take considerably less time to set up than travelling to access the study's location.

Court Hearing Observations

For this study, I observed sixteen court hearings per two weeks per court including observations of sentencing for drug offences. I used an observation checklist to note judges' interactions with offenders during the sentencing hearing and allow for consistency amongst the judges' interactions. This checklist included observable interactions such as the direct dialogue between judges and offenders being sentenced, judges' attention to speeches in mitigation and how judges appeared to respond to the offender. These observable interactions were considered necessary as they were illustrative of the panel judges in their response to the audience in the courtroom. I observed the sentencing processes of the trial court at rural and urban courts for approximately three hours for maximum observable interactions. During my observations of the court hearings, I typically took a seat to the side in the visitor room and did not attempt to take part in the court hearing. Inside the courtroom, before the court hearing began, the judges introduced me to the audiences in the courtrooms to inform them about my

previous professional work and my current status as doctoral research student at the University of Stirling. This introduction may influence the way people behaved during my observation. On some occasions after the court hearing, the judges asked me about the panel "performances" during the court hearing. I answered the question by referring to my observation notes.

In this section, I have discussed the use of court observations as a method. Baldwin (2008) discussed of court observation as a method and its usefulness, but also limitations. The observational study was useful to understand the influence of "court culture" on sentencing and to illuminate the relationship between the various court actors. However, the limitation of the observation is that after several observations, the researcher becomes aware about the tedious nature of court hearings. In Baldwin's (2008) study, the researcher could easily spot the delay in the court calendar, that may upset the researcher energy and time and enthusiasm to observe "the lively dynamic of court actors." In this study, the offender that was often vulnerable, sleepy, concentrated, and looked down. The offender was often not familiar with the court process in contrast to the prosecutors. In Baldwin's (2008) study, the researcher has no influence to the theatre of courtroom drama. This is perhaps different with my experience when my appearance may influence participant behaviour, (as some participants asked for comments on their performance). In Baldwin's (2008) study, the researcher felt that they had made elsewhere the decision making before the court hearing. This is perhaps different to my experience, where I felt that they made the decision making in the court's foreground hearing.

Recruitment of participants

Access

In terms of access, I anticipated that access to the judiciary would present challenges since this group tended to resist social study inquiry.

First, I discussed the study with public relations officers for urban and rural courts. I considered these public relations officers as gatekeepers as they were procedurally the first point of contact for negotiating access. The negotiating with these gatekeepers was essential to secure wider access. The University of Stirling Review Board provided ethical approval to conduct this study. The local court does not require such ethical approval. Second, I negotiated the study with the potential participant by advising them of their choice not to participate and informed them of the benefits of expressing their views. Negotiating access with the potential participants (i.e., the judges) consisted of the District Court Judges involved with the organisational studies, namely, those working in the rural and urban courts. Upon making contact, I asked all the judges whether they were available for the potential interview session. They were emailed with the study information sheet, the interview schedule, consent, anonymity, recording, and use of data sheets. They were asked to read these documents carefully, raise any questions and, if they were still interested in participating, to confirm their availability to take part. I also inform the importance of their participation and making sense of their perspectives. The beneficial result of the study for making sense of their perspective can be considered as a valuable incentive that would have ensured their positive response to the study. Once the urban and rural court judges were available to participate in the study, I started by interviewing a judge (relatively middle position regarding seniority) as it may help develop rapport and trust with other participants. Once an interview with the middle judges was carried out, more participants were obtained. I continued with interviewing fewer senior judges. The interviews were used to gather data about judicial perceptions of sentencing convicted minor drug offenders. To ensure that the collected data was relevant to my theory, I drew from symbolic interaction (Goffman, 1959) as the theoretical framework within the

schedule of interviews and observations before commencing the fieldwork. The latter involved close examination of the philosophy of the Indonesian judicial system.

The third negotiating access point was the public relations officer for the Indonesian Supreme Court. I consider these public relations officers as gatekeepers as they were procedurally the first point of contact for negotiating access. This negotiating access with gatekeepers was essential to secure access to the Indonesian Supreme Court. Upon making contact, I asked the gatekeepers to confirm the Supreme Court judges' availability to take part. Once the Supreme Court judges were available to participate in the study, the interviews with them were carried out. The interview aimed to (1) Understand how Supreme Court judges conceptualise minor drug offenders. (2) Investigate factors that Supreme Court judges think influence them when sentencing minor drug offenders. (3) Examine the Supreme Court judges' overall aims on the sentencing of minor drug offenders and critically assess these against their outcomes. These objectives were set to generate an understanding of the Supreme Court perspectives and to cross-check with the understanding of the lower court.

Data Gathering

Concerning the selection of participants, the participants in urban and rural courts were purposely chosen in a way most likely to shed light on the research question. The context of the participants who worked in urban and rural courts and various characteristics of the participants such as experiences and training status, might affect the judicial perspective on sentencing. All judges, within the urban and rural courts, were included to obtain a range of perspectives. Thirty-one participants were interviewed. As Ward (2013, 2017) suggested that across the international jurisdiction, the various social understanding of the judges' motivation when sentencing can be effectively explored through interview. For example, Ward's study in the United Kingdom indicated the way in which the judges were influenced by the managerial performance measure, which required an economically efficient and effective trial system. The current performance system of incentivising speedy trial may undermine due process and fair justice (Ward 2013, 2017). This situation is perhaps qualitatively different from the Indonesian context, where I felt that the lower court judges need to give accountability to the broader structure of the audience (i.e., the sphere of politics, the public and the religious communities). For the purpose of my study, the number of participants includes those relocated to another jurisdiction but still willing to participate.

Selection of Court

Regarding selection of court, I selected urban and rural courts as the study location because those two courts are on two different islands in Indonesia. The two different locations revealed differences in social context and resources availability. Urban district court is located in South Indonesia and has the capacity to process 327 drug cases with an average of about 14 cases of drugs per month processed between January 2013 and November 2014. This includes cases of misuse, sale, and possession of drugs. According to their fiscal year 2014 case record, the drug types, used by those convicted of drug misuse, were cannabis (48%), methamphetamine (48%), and methamphetamine plus heroin (4%). This court had sentenced 90% of people convicted of drug misuse to custody and 10% to rehabilitation. The court had also sentenced to custody 100% of the people convicted of the sale of drugs and possession. The urban District Court judge was the only court who exercised discretion in their early career. In contrast to urban District Court, rural District Court is located in north Indonesia and has the capacity to process 209 drug cases with an average of about 9 cases of drugs per month processed between January 2013 and November 2014 (District Court Report 2014). This

includes cases of misuse, sale, and possession of drugs. The court also sentenced to custody 100% of the people convicted of the sale of drugs and possession. Despite these differences, there were similarities identified, that is, the comparable positions of junior judges and middle judges. The identified similarities and differences were considered necessary as they help the generation of contextual data and, ultimately, revealed the availability of and access to treatment. Also, I selected those two courts based on the grounds of practicality (i.e., study time and cost).

In terms of data management, data from each interview, which lasted between twenty-seven and ninety-seven minutes, was recorded. I transferred the interview data on my audio recorder to my university computer for analysis and storage. I transcribed all the interview data in full. The transcription process took approximately one day per interview data. I thematically coded the transcribed data in the Indonesian language and then translated it for analysis into English. This thematic coding was used to develop themes and sub-themes (Mason 2002). Efforts to protect the confidentiality of the information included the secure storage of original interview data and paperwork and the protection of electronically stored transcripts with passwords. An anonymous version of the transcript was prepared, with all identifying information removed. Next, I entered the anonymous version of the data into Excel for analysis. Careful data management is central to ensuring reliability in qualitative studies.

Data Analysis

Analyses of data were taken as moving back and forth between broader concepts, experience, and data (Mason, 2002). The data analysis also consisted of coherent social theory. The theory that integrated, at the micro level, the judge-offender interactions, the judicial culture and social structure. This interaction produces an analysis of criminal justice as an ongoing process of social interaction (Henham, 1998, 2000, 2001). I used the following conceptual model to analyse how the dimensions of judicial culture, social structure, and the judge's characteristics might shape the judicial perspective of sentencing for drug offences (Ulmer, 2012). Figure 2 below illustrates this conceptual model.

Figure 2
Conceptual Model

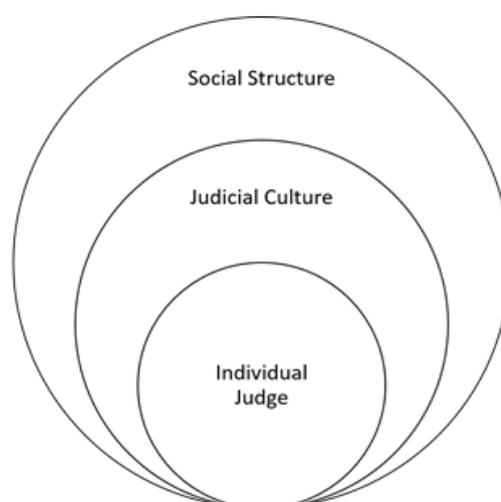


Figure 2 above illustrates the conceptual model that the individual judge's definition, interpretations, and act are influenced by, and in turn influence, judicial culture and broader

social context. The individual judge's definition refers to their attitudes and expectations and how these influences their sentencing practices. The judicial culture is associated with the knowledge that informs everyday practice and shapes the judge's values. The social structure is associated with the social forces that enter into judges' deliberations. Viewed within such a conceptual model, judicial perception on sentencing is viewed as an iterative process. This is the process by which Judges consider the nature of drug offences within the wider context of judicial culture (Davies et al., 2004; Ulmer & Johnson, 2004), social structure (Duff, 2001) and their perspective on sentencing (Hogarth, 1971; Mackenzie, 2005). As Ulmer (2012) noted, judges' perceptions are influenced by, and in turn influence more widely the social structure (Ulmer, 2012).

To analyse the judicial perspectives within the wider context of social structure, data analyses were conducted on interviews and field notes, with the following considerations. First, to understand the judges' explanations regarding sentencing, the interview data and field notes were compared with each other. I started the questions about the individual judges' views on drug sentencing. Then I moved the question onto the judicial culture and how that impacts on sentencing. I continued the question with the wider pressures on society that enter into judges' deliberations. Second, I linked the findings of the field observations to the findings of the interviews and gathered them together. Details of the court hearing process enriched the field notes. My notes from the initial observations were written in a notebook, and the notes of my observations included in-depth descriptions of the judge's approach to sentencing (Ashworth et al., 1984; Tait, 2002). Third, the coding process was checked line by line and through open coding. I re-read the data sets in the form of court observation notes and interview transcripts. Every meaning of sentences, phrases, words, dialogue, and expression was analysed equally. Fourth, all data sets were coded by specific names and categories (Maykut & Morehouse, 2002). I coded the patterns of complex experiences of District Court judges. I developed the theme codebook during fieldwork study in Indonesia and further developed it after fieldwork in Scotland. I categorised the fact-sheet data based on geographical location as this can present similarities and differences between these two courts. A descriptive coding book and qualitative data analysis was performed using Microsoft Excel software. The data were sorted and merged in Excel tables. Theme and sub-theme that were found were discussed with my PhD supervisors. Fifth, I adopted thematic analyses to determine theoretical links between the social structure, the judicial culture and individual perspective of the judges. A thematic coding book were sorted and merged using Microsoft Excel software.

Trustworthiness

I made every effort to ensure that there was a coherent study process through establishing a lucid audit of the study process. For example, I utilised my field journal as a way of expressing various challenges and ethical appraisals that I encountered to assist me in carrying out my fieldwork. Additionally, I maintained study records to improve reliability. The documentation process and fieldwork diaries were analysed in the study or in the analytic notes, which were indexed, organised, and sorted (Mason, 2002). Consequently, other researchers can follow an audit trail (Bloor & Wood, 2006). Quotes from interviews were provided, which cannot only be seen by the reader, but which enable, also, the interpretation of data to be assessed.

My position as an independent researcher but with Court connections allowed for potential bias. As Tata (2002) stated, each judge's response to the researcher's inquiry will be different from their colleagues' responses (Tata, 2002). I informed that my role was to generate an understanding of judicial perceptions and an appreciation of his/her views. I was also alert to the need not to make assumptions or judgements concerning personalities or how the Court

operated. Laying out interview schedules enables a protocol to be followed, a standardisation of questions and prevents deviation. I inserted a disclaimer statement at the beginning of the interview schedules asking judges who had contact with me previously to avoid assumptions that I know certain issues or aspects.

In gaining, in a relatively short timescale, the trust of the Supreme Court senior judges, I realised that the Supreme Court Senior judges needed to be fully informed about the benefits of their participation in this study and that this would make a positive contribution to the Supreme Court's work. I devoted half of the one-hour period to answer several questions about my experiences in the United Kingdom along with recent developments of drug policy and useful articles. This sharing of information allowed me to craft an atmosphere of inquiry and to develop trust with the Supreme Court Senior judges thus allowing them to share their experiences freely. Schuermans & Newton (2012) note the importance of developing the dialogue between study participants and researcher, thus allowing each participant to voice their thoughts freely.

The final aspect involves me being sensitive to the participant's cultural and social norms. I was careful to build up questions related to their perceptions of drug sentencing slowly, asking about their perception first so that the participants would be assured that they were happy to answer. Also, where necessary, I built up these questions in an open-ended, non-threatening way, such as by asking the participants about exciting experiences in sentencing minor drug offenders. Similarly, when discussing what might be perceived as influences on sentencing, I tried to listen to the participant's description without implying any criticism. Moreover, I regularly reminded the participants that the study was voluntary. In this study, I employed a number of quality assurance steps and procedures to enhance the validity and reliability of the findings. Also, I was always vigilant in ensuring that each emerging theme and description was grounded truly in the data. This fastidiousness and vigilance enhance confidence that this study's findings reflect closely the reality of drug sentencing in the courts studied over the period of fieldwork (December 2015 to March 2016).

Results

In this section, I present the various perspectives and understandings that underpin the judicial response to minor drug offenders. The results are considered in light of the participant perception that the sentencing of minor drug offenders embodies challenging issues, especially with structural inequality issues. Based on the interviews with judges and court hearing observation, I present in this section the participants' perceptions of defendants and the significance of the class structure that emerged from the interviews.

Inequality in Sentencing

This section presents the participants' perceptions that people of a lower social class³ use drugs and get caught trying to resource their drug-taking. Interviews with participants in this study revealed that post the 2009 Indonesian Drug Act, people of a lower social class were being targeted by the criminal justice system. The people who are more likely to experience poverty are at risk of being arrested because they tend to be involved in drug offences to earn money from selling drugs. Consequently, most of the people charged with breaking this new drug law are from underprivileged/poorer backgrounds. A substantial minority of the participants (i.e., 5 from 31) argued that these people do not receive appropriate treatments

³There was an essential issue about the term "lower class" which the participants often assumed to mean "manual labourers" and "jobless person." The term "lower class" used by the participants in this thesis is not an accurate classification but merely reflecting how the participants categorise certain strata of Indonesian society.

(e.g., rehabilitation) and are therefore at disproportionate risk of being imprisoned. For example, Judge 5 (urban) describes how during the Pre-Reformation Era⁴ drug use was a “trend.” By contrast, during the Reformation Era, drug consumption was a crime, and those from underprivileged/poorer backgrounds were at risk of being arrested. The following excerpt indicates this point:

In 2008, when the former drug law was in use, [there were larger numbers of drug use, however, there was a lower number of people sentenced] [...]. At that time narcotics was considered a “trend.” For example, the elite classes hanging out on the street in an affluent area would often take ecstasy on a Sunday evening. The people who resided in poorer areas deemed this the lifestyle and drug consumption of choice of the elite classes. Nowadays, drug consumption is seen as a crime and the average person accused/charged with drug consumption is from an underprivileged/poorer background. (Judge 5, urban)

The above quote indicates that Judge 5 is aware that drug users from underprivileged/poorer backgrounds are more likely to be arrested. A substantial minority of the participants (i.e., 5 from 31) frequently explained that the majority of the people being charged with breaking the new drug laws were from lower social backgrounds. Furthermore, the substantial minority of the participating judges in rural court stated that the criminal justice system often targeted lower-class drug users. For example, Judge 28 (rural) describes how 90% of minor drug offenders are lower class citizens. They mentioned:

I ask the offenders: "Why do you use methamphetamine?" 90% of them coming from a lower class replied: "The first is to increase my stamina for undertaking hard manual labour"; this is the dominant perception among drug offenders. 10% of them, who come from the middle class, replied that "drugs are perceived as a way of life." (Judge 28, rural)

Along a similar line, Judge 8 (urban) stated:

“So far, as I have observed during the court, the offender I sentence is not a middle-class person, actually, they are rarely from the middle class” (Judge 8, urban). Judge 12 (urban) also commented,

At the moment, those who are being arrested are mostly low-level offenders, while the drug dealers remain hidden, and the police will close the cases. By contrast, those who use one smoke, or those who are found using drugs, although the quantity of drugs is only zero points zero, their cases will be brought to the court. (Judge 12, urban)

From their statement, it can be seen that Judge 12 and Judge 8 believe that poverty influences a person's choice to sell drugs to provide themselves with free drugs to use. Also, the substantial minority of the participants (i.e., 4 from 31) indicates the reason why people

⁴The term "Reformation" refers to the end of New Order Era during Suharto regime. The New Order Era is more focused on the economic development and less focused on the democratic system. The Drug Law 35/2009 was born after the Reformation Era. After the Reformation Era, particularly the provisions of drug sentencing were set under standard minimum sentencing. The provision required the judge to adhere to the standard minimum length of imprisonment required by the law. This impacted on judicial discretion limiting them from delivering a sentence below the standard minimum sentencing.

from a lower class tend to use drugs compared to people from the middle-class. As Judge 6 indicated: “The motive is economic problems, obviously, the offenders have no jobs, and unemployment weighs heavily, and citizens are marginalized because of their behaviours....” (Judge 6, urban). This quote indicates that Judge 6 is aware that drug users are marginalised because of their behaviour. Moreover, it seems that Judge 6 recognised these effects of poverty on sentenced offenders. In understanding the causal relationship between the effects of poverty and drug taking, Judge 14 (urban) indicates that unemployment led people to get involved in minor drug offences:

In urban areas, unemployment becomes an issue; this is the reason why people want to sell drugs because they receive not only commission for selling drugs but, also, receive free drugs to use. So, they have a dual role, for example, the price of drugs is Rp50,000.00 (around £3.00), the person will receive commission both from the seller and from the buyer and will be allowed to have a sample of drugs for his own use. (Judge 14, urban)

Moreover, Judge 14 (urban) asserted that a jobless person is at risk of being involved in minor drug offences. The substantial minority of the rural court participants (i.e., 3 from 11) claim that drug taking often occurs because of the environment. As Judge 20 (rural) mentioned, “People use drugs just to have fun, or due to their unstable job status, or through curiosity about drugs, and peer influence...” (Judge 20, rural). Similarly, Judge 23 (rural) believed, “The minor offenders are a perpetrator who, at the same time, becomes a victim of their circumstances. Sometimes, they become the victim of their circumstances due to peer influence and living in a drug dealing environment.” Regarding the connection between minor drug offences and having a lower-class status, the substantial minority of the participants noted three different reasons why lower-class citizens have the potential to engage in minor drug offences. First, lower class citizens tend to get involved in drug culture, as can be seen in the following statement from a participating rural judge:

There is person B who was persuaded initially to use drugs and, then, was forced to distribute them. When he had no capital to buy drugs and was living in a drugs culture and needing money for survival, then, he might carry out dual activities of both selling as well as using drugs for a commission. (Judge 19, rural)

As shown, Judge 19 (rural) considers the offender's social circumstances to be a motivation that influences minor drug offences. Judge 19 indicates that unemployment led people to drug taking.

The substantial minority of the participants (i.e., 4 from 31) indicate that lack of understanding of the harm caused by taking drugs and the perceived energy boost for working hard led the defendant to drug-related offences. As stated by Judge 8 (urban), “...once the person has an issue of drug use, he/she could do collective purchasing⁵, or alternatively, other ways such as stealing. This is the reason why despite his job is only a driver, he/she can purchase methamphetamine” (Judge 8, urban). Similarly, Judge 27 (rural) indicated,

Drugs seem to have become the disease; sometimes they are not aware of the effects and they continue to use them. These circumstances make me

⁵Personally, they have not enough money to buy drugs, so each person was contributing to buy drugs.

sympathetic, due to their doing everything to get drugs. They will sell everything available and this escalates to stealing.

According to Judge 27's assertion, lack of understanding of the harm caused by taking drugs has led lower class citizens to a risk of being arrested because they tend to be involved in other offences to feed their need for drugs. Seen in this way, both participating rural and urban court judges described how poverty, drug culture, and living under drug prohibition regimes can be considered as contributing factors to the lower classes being targets of the police. As expressed by Judge 28 (rural) who indicates the following reasons for this selective targeting: "...the tendency of the police to take advantage in the case of drugs is quite significant. We have to be honest about it" (Judge 28, rural).

Moreover, the assertion expressed above by the rural Judge about the link between lower class citizens and discriminatory policing practices of targeting drugs indicates that lower-class drug users are arrested more often. The second impact of lower-class drug users on sentencing was seen by the substantial minority of the participants (i.e., 3 from 17) as affects discriminatory sentencing practices. This is because the majority of the people being charged with breaking the post-2009 Drug Law are from lower social backgrounds and have no other choice than to accept imprisonment. The following statement from an urban court judge indicates this point:

The current problem relates to the requirement for doing rehabilitation... On the one hand, all the requirements for rehabilitation should be met. On the other hand, the offender should pay for the assessment. For those who become the victim of their circumstances and economically poor as beggars, they should receive rehabilitation. However, due to the challenges to meet the requirement for receiving rehabilitation, there is no other choice for those poorer offenders than having to accept imprisonment. However, for those wealthy offenders, they receive rehabilitation no matter how large the quantity of drug evidence. (Judge 1, urban)

As shown above, Judge 1 (urban) asserts that drug users who are economically weak are discriminated against as they have an issue paying for an assessment, preventing them from receiving rehabilitation. It also seems that Judge 1 identifies those drug users as lower-class citizens. This suggests that being poor is the reason behind the failure to receive equal access to treatment. The substantial minority of the participants emphasised that lower-class drug users tend to be sentenced to prison. Moreover, they are all in agreement that drug users suffer from discriminatory sentencing practices and lack of opportunity to receive treatment.

Discussion and Conclusion

Structural Inequality

It can be seen from the findings presented in result section that poverty often led people to become targets of the criminal justice system and they often ended up in prison. Findings showed that the majority of minor drug offenders are those who have socio-economic issues. The socio-economic issues also led to the condition where the minor drug offenders had no other choices that would prevent them from using drugs. An underlying issue that caused drug use was the circumstantial one situated in socio-economic disadvantage. Thus, minor drug offenders are considered as victims of their circumstances. Poverty was found to lead people to the drug culture. For example, labourers (i.e., poor people) used drugs to increase their stamina for undertaking hard manual labour. Moreover, lack of understanding of the harm that

can be caused by taking drugs was also considered as a contributing factor to people involved in minor drug offences. Based on these points, it can therefore, be argued that drug taking in Indonesia reflects the economic inequality in broader social structures. This is aligned with the argument given by Carlen (1994, 2013) that the reality of the society under socio-economic disadvantage is one which itself is often unjust. Within structural inequality, the imposition of sanctions to minor drug offenders who suffer from socio-economic problems engenders issues around the delivery of justice. This finding support Buchanan's (2006) argument which has advocated the importance of the judges producing a sentence that is supportive to those offenders who suffer from socio-economic problems. The structural issues attached to drug use would appear to represent a departure from contemporary drug treatment research, which has advocated the need for drug users' access to stable employment (Duke 2010; Komalasari 2020; 2021). The desire to deliver justice to minor drug offenders instinctively drives the substantial minority of the participating judges (i.e., 5 from 31) to make judgments on a moral basis in the case study court.

Limitations of This Study

In terms of the limitation of the methods, my position as an independent researcher but with court connections allowed a potential bias. My previous background as a judge and my current status as a researcher may influence the participating judges' response. My efforts to minimise bias is explained in detail in the section about validity. The issue of researcher bias in respect of the validity of the information, obtained in the studied courts, needs to be considered carefully. Future qualitative studies of sentencing minor drug offences may be better conducted by researchers acting independently from, but actively supported by local research institutions to ensure the researcher's impartiality. In this way, the participants could give high levels of commitment to the study. The relatively small sample of panel judges who participated in the study, although comparable with other similar qualitative studies and justified by the contextualised of the data collected, limits the generalisability of the findings outside Indonesian jurisdiction. The study can only provide a partial picture of justice for minor drug offenders in the Indonesian context since it examined the empirical evidence only from judges' point of view, not from that of the person judged or other law enforcers or the public and media. Thus, it would be valuable if a future study would consider the public perspective on justice for minor drug offenders.

In this paper, I presented the methodological approach to generate a contextual understanding of the influencing factors on drug sentencing. In terms of the limitation of the methods, my position as an independent researcher but with Court connections allowed a potential bias. My previous background as a judge and my current status as a researcher may influence the participating judges' response. My efforts to minimise bias is explained in detail in the section about trustworthiness. The study is now finished and findings themselves are presented in the Results section. As reported in this paper, drug taking in Indonesia reflects the economic inequality in broader social structures. Therefore, the practical measures recommended above need to be coupled with a social policy that addresses the issue of structural inequality to achieve broader social justice.

References

- Anleu, S. & Mack, K. (2017). *Performing judicial authority in the lower courts*. Palgrave Macmillan.
- Ashworth, A., Genders, E., Mansfield, G., Peay, J., & Player, E. (1984). *Sentencing in the crown court*. Centre for Criminological Research University of Oxford.
- Baldwin, J. (2008). Research on the criminal courts, In R. D. King & E. Wincup (Eds.), *Doing research on crime and justice* (2nd ed., pp. 375-398). Oxford University Press.
- Bloor, M., & Wood, F. (2006). *Keywords in qualitative methods: A vocabulary of research concepts*. SAGE.
- Buchanan, J. (2006). Understanding problematic drug use: A medical matter or a social issue. *British Journal of Community Justice*, 4(2), 387–397.
- Carlen, P. (1994). 'Crime, inequality, and sentencing'. In A. Duff & D. Garland (Eds.), *A reader on punishment* (pp. 306-332). Oxford University Press.
- Carlen, P. (2013). Against rehabilitation; for reparative justice. In K. Carrington, M. Ball, E. O'Brien, & J. Tauri (Eds.), *Crime, justice and social democracy: International perspectives* (pp. 89-104). Palgrave Macmillan.
- Davies, M. Takala, J., & Tyrer, J. (2004). Sentencing burglars and explaining the differences between jurisdictions: Implications for convergence. *British Journal of Criminology*, 44(5), 741-758.
- Duff, R. A. (2001). *Punishment, communication, and community*. Oxford University Press.
- Duke, K. (2010). Clashes in culture: The professionalisation and criminalisation of the drugs workforce. *British Journal of Community Justice*, Special Edition, 8(2), 31-43.
- Feeley, M. M. (1992). *The process is the punishment: Handling cases in a lower criminal court*. Russell Sage Foundation.
- Hay-Gibson, N. V. (2009). Interviews via VoIP: Benefits and disadvantages within a PhD study of SMEs. *Library and Information Research*, 33(105), 39-50.
- Henham, R. (1998). Human rights, due process and sentencing. *British Journal of Criminology*, 38(4), 592-610.
- Henham, R. (2000). Problems of theorizing sentencing research. *International Journal of the Sociology of Law*, 28(1), 15-32.
- Henham, R. (2001). Theory and contextual analysis. *International Journal of the Sociology of Law*, 29(3), 253-276.
- Hogarth, J. (1971). *Sentencing as a human process*. University of Toronto Press.
- Hutton, N. (2006). Sentencing as a social practice. In S. Armstrong & L. McAra (Eds.), *Perspectives on punishment: The contours of control* (pp. 155-174). Oxford University Press.
- Komalasari, R., Wilson, S., & Haw, S. (2021). A systematic review of qualitative evidence on barriers to and facilitators of the implementation of opioid agonist treatment (oat) programmes in prisons. *International Journal of Drug Policy*, 87, 102978.
- Komalasari, R., Wilson, S., Nasir, S., & Haw, S. (2020). Multiple burdens of stigma for prisoners participating in Opioid Antagonist Treatment (OAT) programmes in Indonesian prisons: A qualitative study. *International Journal of Prisoner Health*.
- Law 35 (2009). (Narcotics Law of Indonesia).
- Mackenzie, G. (2005). *How judges sentence*. Federation Press.
- Mason, J. (2002). *Qualitative researching*. SAGE.
- Maykut, P., & Morehouse, R. (2002). *Beginning qualitative research: A philosophical and practical guide*. Routledge.
- Mulyadi (2012). *Punishment against traffickers and drug users: Research on principles*,

- theory, and practice norms application in court.* Research Centre for the Indonesian Supreme Court.
- Mustafa, C. (2021a). The view of judicial activism and public legitimacy. *Crime Law Soc Change*. <https://doi.org/10.1007/s10611-021-09955-0>
- Mustafa, C., Suhariyanto, B., & Santoso, T. (2021b) Liability incorporate between transnational corruption cases Indonesia and the United States of America. *Journal of Legal, Ethical and Regulatory Issues*, 24(3), 1–10.
- Schuermans, N., & Newton, C. (2012). Being a young and foreign researcher in South Africa: Towards a postcolonial dialogue. *Singapore Journal of Tropical Geography*, 33(3), 295-300.
- Tait, D. (2002). Sentencing as performance: Restoring drama to the courtroom. In C Tata & N. Hutton (Eds.), *Sentencing and society: International perspectives* (pp. 469-480). Ashgate.
- Tata, C. (2002). Accountability for the sentencing decision process: Towards a new understanding. In C. Tata & N. Hutton (Eds.), *Sentencing and society: International perspectives*, (pp. 400-428). Ashgate.
- Ulmer, J. T., & Johnson, B. (2004). Sentencing in context: A multilevel analysis. *Criminology*, 42(1), 137-178.
- Ulmer, J. T. (2012). Recent developments and new directions in sentencing research. *Justice Quarterly*, 29(1), 1-40.
- Ward, J. (2013). Punishing drug possession in the magistrates' courts: Time for a rethink. *European Journal on Criminal Policy and Research*, 19(4), 289-307.
- Ward, J. (2017). *Transforming summary justice. Modernisation in the lower criminal court.* Routledge.

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