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## **Criminal Verdicts Under the Special Minimum in Regional Head Elections: A Perspective of Justice**

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### Abstract

*The purpose of this research is to examine criminal judgements made below the specific minimum threshold in regional head election cases that pose a dilemma between justice and legal certainty. This research uses secondary data collected from literature study; normative juridical method and descriptive analysis are used. The results show that the objectives of punishment are affected by verdicts below the specific minimum, especially in terms of public order and the integrity of the democratic process. Although this may override the principle of legal certainty, judges usually prioritise a sense of justice by considering the defendant's mitigating factors. In summary, a clearer revision of the regulations should be included with the penal policy and its implementation. This will help judges balance substantive justice and legal certainty.*

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## **INTRODUCTION**

Law enforcement in society helps make important, public awareness and compliance with the law, which functions as a means of protection, social control, a means of social change, and an integrative tool (Mutamakin & Mahmud, 2022; Rahardjo, 2009). The purpose of law is to realise justice, order, and humanity in society. According to Soedarto, punishment is a deliberate suffering given to someone who has committed certain acts (Rahmawati et al., 2024; Muladi & Arief, 2005).

Special minimum punishment is a punishment that stipulates a certain minimum sentence period. This provision is not regulated in Act No. 1 Year 2023 on the Criminal Code (KUHP), but is regulated outside the KUHP. The purpose of applying special minimum punishment is to reflect the severity of the criminal offence committed and to reduce the difference in sentencing (Davis & Maharan, 2024). Inconsistent application of penalties for comparable offences or with comparable levels of harm without a clear basis is known as criminal disparity (Muladi & Arief, 2005).

According to research conducted by the National Legal Development Planning Working Team in the field of Criminal Law and Criminalisation System (Mudzakkir, 2008), conducted by the Ministry of Law and Human Rights, National Law Development Agency, the structure of special minimum punishment in the 2023 Criminal Code is as follows:

**Table 1.1.**

Minimum punishment categories in Law Number 1 Year 2023 on the Criminal Code (KUHP)

Category of Offence	Maximum	Minimum
1. Heavy	4 to 7 years	1 year
2. Very Serious	7 to 10 years	2 years
	12 to 15 years	3 years
	Death / life	5 years

**Source:** Act No. 1 Year 2023 on the Criminal Code (KUHP)

Based on Table 1.1 regarding the minimum punishment categories in the 2023 KUHP, there are significant differences in the punishment for serious and very serious offences. For Serious Criminal category, the minimum punishment that can be imposed is 1 year, with maximum punishment ranging from 4 to 7 years. Meanwhile, for the Very Serious Criminal category, the minimum sentence ranges from 2 to 5 years, with a much higher maximum sentence of 7 to 15 years, or even death or life imprisonment. This shows that the 2023 Criminal Code pays more attention to serious criminal offences by stipulating heavier penalties, in accordance with the level of the crime. In the context of regional head elections, the application of this special minimum penalty can be imposed on perpetrators of offences that fall into the category of serious or very serious crimes, in order to ensure justice and order in the democratic process.

Andi Hamzah said that judges in Indonesia are very free in determining the severity of sentences for defendants because articles of the Criminal Code do not have minimum sentences like those in the United States (Lisanawati Go, 2021). For example, sentences for murder can differ greatly and can be up to five years in prison in one case, while in another case it can be up to ten years in prison. In this case, it may be beneficial to include a minimum penalty provision in each article of the criminal law.

Special minimum punishment is a specific law outside the Criminal Code and in the upcoming Criminal Code, does not include a special minimum punishment. Law of the Republic of Indonesia Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents and Mayors into Law stipulates a prison sentence of 36 months and 72 months, a minimum fine of IDR 200,000,000.00 and a maximum of IDR 1,000,000,000.00.

Penal Policy in Penal Law includes three main branches: Legislation, Application, and Administration (Gann & Palmer, 2021). These branches are integral to the execution of Penal Law. Legislation focuses on minimum tax rates to minimize and reduce taxes, aiming to enhance democratic and transparent local government and encourage leaders to pursue aspirations and community development.

The 1945 Indonesian Constitution guarantees the independence of judges, which is based on the constitutional independence of the judicial power. Act No. 48/2009 on Judicial Power also implements it. Judges have the freedom to decide in criminal cases based on their own opinions and beliefs. The applicable laws and regulations and the facts revealed in the trial must form the basis of this judgement (Andriani, 2023; Wulandari et al., 2023; Permadi &

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Wisnaeni, 2020). Although the law has provisions, it is not always clear and complete, and the law often cannot capture the social conditions and situations of society that change and change over time.

Special minimum punishment is not known in the Criminal Code, but is often applied in criminal laws outside the Criminal Code, such as the Law on Regional Head Elections, applying the principle of *lex specialist derogate legi generalis*, meaning that special law overrides general law. The purpose of applying special minimum penalty is to avoid disparity in court decisions on criminal offences, which is significant in the severity of punishment for similar cases (Artanti & Arifin, 2020).

Judges have different opinions on special minimum criminal provisions. Some judges are of the opinion that special minimum penalty provisions are mandatory and must be strictly adhered to. On the other hand, some judges argue that in certain situations, judges can ignore them, and argue that judges not only interpret the law but also uphold justice. Therefore, in emergencies, judges may go beyond the specific minimum criminal provisions set out in the special criminal laws to ensure greater justice (Witanto & Kutawaringin, 2013).

The problem arises due to the absence of a clear formulation of sentencing guidelines in special criminal laws outside the Criminal Code that includes formulations regarding the imposition of special punishment. This is exacerbated by the fact that judges handling special criminal cases are often faced with various factors that can mitigate the perpetrators of criminal offences. The absence of clear guidelines requires judges to navigate the complexity of situations and diverse considerations without consistent guidance, which may affect the imposition of punishment in a fair and equitable manner. When judges deviate from the specific criminal provisions due to the large number of mitigating factors for the accused, a tension arises between legal certainty on the one hand and legal justice on the other (Wibowo, 2021). The *ius curia novit* principle, which assumes that judges always know the law, requires that judicial decisions include adequate consideration. These considerations must be rational and acceptable to academics, the general public, and the parties involved in the case. Therefore, although judges have the freedom to consider mitigating factors, their decisions must still meet the expected standards of legal certainty and justice.

Judges impose general criminal sanctions referring to the Criminal Code (KUHP), applying a system of specific minimums and general maximums, as well as general minimums without a specific system for each case (Royani, 2024). The verdict in a trial (*inkracht van gewijsde*) often has permanent legal force, although it sometimes creates a perception of injustice. Judges are always faced with 3 (three) principles, namely the principle of legal certainty, the principle of justice, and the principle of expediency. The three principles must be implemented in a compromise manner, namely applying all three in a balanced or proportional manner, said Sudikno Martokusumo (Baidi & Nurdin, 2023).

So that in its application, the principle of legal certainty is overridden where some judges do not comply with these laws and regulations by deciding below the special minimum as in the following examples of Regional Head Election case decisions: Ciamis District Court Decision number: 1/Pid-Sus-Election/2021/PN Cms, district court decision number: 2/Pid.Sus-Election/2021/PN Cms and district court decision number: 3/Pid. Sus-Election/2021/PN Cms, in which the defendants were legally and convincingly proven guilty of violating Article 187

A paragraph (1) of the Law of the Republic of Indonesia concerning the Election of Governors, Regents and Mayors Jo Article 55 paragraph (1) to 1 of the Criminal Code, where the judge sentenced each of them to 12 (twelve) months imprisonment with a probationary period of 1 (one) year imprisonment and a fine of IDR. 100,000,000, - (one hundred million rupiah) Subsidiary 1 (one) month imprisonment.

Decision of the Sigli District Court, number: Number 54/Pid.Sus/2017/PN Sgi. On behalf of the defendants M. Nazar Bin Syafi'i and Ridwan Bin Ahmad, where the defendants were proven legally and convincingly guilty of violating Article 187 A paragraph (1) of the Indonesian Law on the Election of Governors, Regents and Mayors in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code, where the judge sentenced each of them to 1 (one) year imprisonment and a fine of IDR. 200,000,000, - (one hundred million rupiah) Subsidiary 1 (one) month of confinement.

Decision of the District Court of Ciamis, Number 2/Pid.Sus.Pemilihan/2018/PNCMS, on behalf of the defendant Nurjaman Alias Nur Jm Bin Suparno, where the defendant was legally and convincingly proven guilty of violating Article 187 A paragraph (1) jo Article 73 paragraph (4) letter c of the Law of the Republic of Indonesia concerning the Election of Governors, Regents and Mayors, where the judge sentenced each of them to imprisonment for 1 (one) year with a probation period of 1 (one) year imprisonment and a fine of IDR. 200,000,000, - (one hundred million rupiah) Subsidiary 1 (one) month of confinement.

Judges often impose criminal sanctions under the special minimum criminal provisions stipulated in Article 187A paragraph (1) of the Law of the Republic of Indonesia on the Election of Governors, Regents and Mayors. This provision stipulates a minimum imprisonment of 36 months and a maximum of 72 months. However, in reality, judges set sanctions that fall below these minimum requirements, which is contrary to the principle of legality set out in the legislation.

Although judges consider both minimum and maximum sanctions, judgements often do not fulfil the minimum standard. This leads to contradictions between the racial views of judges, who may favour the interests of the accused over the community's sense of justice. In fact, the specific criminal sanction provisions clearly set minimum and maximum limits for judges' judgement.

Judges who often impose sanctions below the minimum provisions cause inconsistencies that are contrary to the law. Ideally, sanctions should provide legal security and a sense of justice to the community. The rules set out in the law will create a sense of injustice and legal uncertainty in the community if there is no consistency in deciding special criminal cases in accordance with clear provisions.

The purpose of this study is to analyse the application of special minimum punishment in the criminal justice system in Indonesia, particularly in relation to violations of regional head elections. This research aims to understand the extent to which the application of special minimum criminal provisions stipulated in laws outside the Criminal Code provides legal certainty, justice, and expediency in the imposition of criminal sanctions. In addition, this study also aims to explore the criminal disparity that occurs due to the application of special minimum criminal provisions by judges and its impact on social justice and legal compliance in the community.

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## METHODOLOGY

The purpose of this research is to see how the special minimum criminal provisions are applied in the Indonesian criminal justice system. This method involves studying the applicable regulations, particularly the new Criminal Code (KUHP) and Law No. 10/2016 on Regional Head Elections. In addition, this research includes previous research on criminal law theories as well as the concept of justice used in judges' decisions. The primary data used are relevant court decisions, such as the decisions of the Ciamis and Sigli District Courts that show differences in sentencing under the special minimum criminal provisions. Secondary data sources came from books, journals, and legal articles that discuss the principles of criminal law and the application of special minimum punishment. To collect data, a literature study was conducted, which included text analysis of laws and regulations, court decisions, and other legal sources. Then, the data was analysed in a descriptive-qualitative manner to show how judicial practices apply special minimum punishment. In addition, this research aims to study the different decisions that occur and their legal and social consequences in the context of regional head elections. This research is expected to provide a comprehensive picture of the extent to which special minimum criminal provisions can provide legal certainty, justice, and benefits in the imposition of criminal sanctions in Indonesia using this approach.

## RESULTS AND DISCUSSION

### 1. Implications of Convictions Below the Special Minimum in Regional Head Elections for the Purpose of Punishment

The judge is the one who decides whether a person is guilty of the alleged criminal offence. In practice, judges impose penalties under specific minimum penalties stipulated by law, such as the Law on Regional Head Elections. In cases where the criminal offence includes giving or promising money to voters to influence their choice, the sanction imposed should be in accordance with the stipulated provisions.

According to Article 187A paragraph (1) of the Law of the Republic of Indonesia on Regional Head Elections, it is unlawful for any person who intentionally commits an unlawful act by promising or giving money or other material in return to an Indonesian citizen, either directly or indirectly, to influence voters not to exercise their right to vote, to exercise their right to vote in a certain way so that the vote is invalid, or to elect a certain candidate as an invalid regional leader.

Decisions that impose sanctions below the minimum provisions certainly raise juridical implications or legal consequences that arise from decisions that impose sanctions below the minimum provisions, and how this affects legal certainty and justice in the long run, causing public distrust of the current justice system.

Decision of the District Court of Ciamis Number 1/Pid.Sus-Election/2021/PN Cms, as well as the juridical consequences of the decision, In its consideration, the panel of judges of the Court of Appeal agreed with the district court judge that the defendant was proven to be guilty of the single charge of Article 187 A paragraph (1) of the Law on the Election of Governors, Regents and Mayors Jo Article 55 paragraph (1) to 1 of the Criminal Code The verdict is below the special minimum in the decisions of the judges of the court of first instance

and the court of appeal: The District Court of Ciamis in decision number 1/Pid.Sus-Election/2021/PN Cms stated that the defendant Nina Miati Binti Sarno mentioned above, had been proven legally and convincingly violating Article 187 A paragraph (1) of the Law on regional head elections, sentenced the defendant to 12 (twelve) months imprisonment and a fine of IDR. 100,000,000.00 (one hundred million rupiah), ordered that the imprisonment does not have to be served, unless in the future there is a judge's decision that determines otherwise, due to the defendant committing a criminal offence before the expiration of the probation period of 1 (one) year, stipulated that if the fine is not paid by the defendant, it will be replaced by imprisonment for 1 (one) month and Charged the defendant to pay court costs in the amount of IDR.5.000,00 (five thousand rupiah).

Rather, to protect the perpetrators from punishment, the application of punishment below the special minimum against perpetrators of regional head election crimes is not intended to avoid judges from punishment. Instead, the application of this punishment is based on various considerations, including mitigating factors for the perpetrator. Sentencing is not just a form of retribution; it is also intended to achieve positive outcomes, such as giving the perpetrator the opportunity to be rehabilitated or obtain restorative justice.

Judges will explain more about sentencing under the special minimum. This includes looking at how the judge considers various aspects, including mitigating considerations, when the judge sets the sentence, and how the decision impacts on the principles of justice and legal certainty in society.

The consideration of the Panel of Judges in Decision Number 1/Pid.Sus-Election/2021/PN Cms covers several important aspects. First, in addition to considering criminal provisions as an aspect of legal certainty, the Panel of Judges also emphasised the need for a balance between aspects of justice and expediency, so that the decisions taken not only have a strong juridical basis, but are also supported by philosophical and sociological values that reflect broader social needs. Secondly, the defendant has shown a sense of responsibility by admitting and regretting her actions, and is a mother of a toddler who is the backbone of her family; therefore, the Panel of Judges hopes that the punishment imposed can be an educational lesson for the defendant and the community, reminded that criminal sanctions, especially imprisonment, should be the last resort (*ultimum remedium*). Third, considering the cooperative attitude of the defendant during the trial and the nature of the criminal act committed, the Panel of Judges believes that it is better if the punishment imposed is carried out outside the correctional institution, while still undergoing supervision in accordance with applicable regulations. Lastly, despite the provisions on specific minimum punishment, the Panel of Judges recognised that in certain cases, judges may impose a lighter punishment on a casuistic basis, with the aim of ensuring that the punishment remains proportional to the crime committed, as well as considering the specific circumstances of each case to achieve more appropriate justice.

In addition to the decision of the district court, there was also an appeal level decision in which the Bandung Court of Appeal in its decision upheld the decision of the Ciamis District Court dated 25 January 2021, Number 1/Pid.Sus-Election/2021/PN Cms, which was requested for appeal and burdened the defendant to pay court costs at both levels of court, which at the appellate level amounted to IDR. 5,000.00, (five thousand rupiah); This decision clearly

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contradicts the provisions of Article 187 A paragraph (1) which states that the minimum prison sentence is 36 (thirty-six) months.

The existence of judges' decisions that deviate from the provisions of the Law is often associated with Article 5 paragraph (1) of the Judicial Power Law, which states: 'Judges and constitutional judges shall explore, follow, and understand the values of law and the sense of justice that lives in society.' However, it should be remembered that the Law of the Republic of Indonesia on the Election of Governors, Regents and Mayors is a relatively new law and has undergone improvements from previous laws. The process of formulating this law involved an assessment of the current sense of justice in society, and the changes reflect an attempt to adapt the law to the development of prevailing social values and justice needs.

If there is a legal conflict between laws and regulations and court or judge decisions, this legal conflict is usually resolved by a legal principle known as *res judicata* (Mawangi, 2023). This principle states that court decisions that have permanent legal force are considered correct and binding, so that provisions in laws and regulations that conflict with these decisions can be considered invalid in the context of the case (Arifatuzzahrah & Hasba, 2024; Christia et al., 2024; Fathor & Widiarto, 2024; Holili et al., 2024; Mawangi, 2023). That the application of this principle does not mean that the legislation as a whole is ignored. Rather, *res judicata* ensures that decisions that have been made by the court serve to provide legal certainty in a particular case, although it must still pay attention to the broader context and legal developments (Rayhan & Krisna Wijaya, 2023).

When looking at the notion of 'Res Judicato Pro Veritate Habetur' explained by Sudikno Mertokusum, the judge's decision is generally considered correct during the legal process, even if there are problems such as false testimony. If the judge decides based on inaccurate testimony, the decision is still considered valid and correct until it gains permanent legal force, or until there is a decision from a higher court through the appeal or cassation process that cancels or changes the decision. This principle maintains legal certainty and stability of the judicial system, but also ensures that there is a mechanism to correct mistakes through the appeal and cassation process (Mertokusumo, 2006).

Judges have a very important role in the law enforcement process of this country because of the principle that a judge's decision must be considered correct. If judges are honest and have integrity, court decisions can put the public at ease. If the judge abuses liberty in the court process, it may earn criticism and condemnation from the public. In these circumstances, judges often advise dissatisfied parties to file an appeal or cassation, as the judge's decision is considered correct until a higher court decision.

This also applies to criminal offences relating to the regional head elections discussed by the author. The judge imposed a minimum prison sentence of 12 months' imprisonment and a fine of Rp100,000,000.00 in the first instance judgement. Despite the errors in the judgement, the Public Prosecutor could only appeal as he believed that the decision of the district court judge deviated from the law. However, at the appeal level, the High Court judge upheld the decision of the District Court and still deviated from the law. Despite contradicting the provisions of the Law on Regional Head General Elections, the decision was deemed correct and obtained permanent legal force because no appeal was filed to the Supreme Court.

Basically, judges of the judiciary act freely, impartially, and try to resolve cases in a way that best suits their abilities as judges. This is in accordance with Article 1 point 1 of the Judicial Power Law Number 48 of 2009. The freedom of judges in carrying out their duties is not absolute. Judges must comply with Pancasila, the 1945 Constitution of the Republic of Indonesia, laws and regulations, public order, the will of the parties, and decency when doing so. The freedom of judges is not always universally applied in every country. How each country regulates and supervises the freedom of judges varies, depending on its legal, social, and cultural environment.

As the freedom of judges to hear cases is not absolute, limits are required to ensure that the judicial power operates within the confines of the law without compromising the freedom that is the basis of its functioning. These limits are in place to ensure that judges' decisions are not only based on personal judgement but also in accordance with applicable legal principles that guarantee justice, legal certainty, and the public interest. Judges can only make decisions based on the law, which means every decision must explicitly refer to the applicable rules, so that the decision has a strong legal basis and is acceptable. In addition, judges are authorised to interpret and construct the law, and in some cases, to avoid applying statutory provisions where necessary to achieve substantive justice. During this process, judges must ensure that, although they may interpret the law in different ways, the decisions they make remain consistent with the fundamental principles of law and justice.

This is because no one can take direct action against judges if their decisions are deemed unjust. Even the state cannot hold judges liable for mistakes that may occur while performing their judicial duties. Only personal behaviour that harms the state or defames the dignity of the judiciary can trigger action against judges. This shows that although judges have the authority to make decisions, they are still bound by the rules of professional behaviour and ethics necessary to keep the judicial system clean.

## **2. Special Minimum Sentences in Regional Election Crimes in Relation to the Principle of Justice**

One of the purposes of law enforcement, or law enforcement, is to ensure that laws are properly applied so that the values championed through legal instruments can be implemented. Although laws are made to achieve the principles of justice and order, law enforcement may not always function properly as it is sometimes used to justify certain actions.

Law enforcement in Indonesia, the main objective is to protect the public from any form of crime that may occur. The state is responsible for preventing and tackling crime. Law enforcement should concentrate on protecting society, ensuring that crime is prevented and tackled quickly, and ensuring justice and security for all citizens.

It is expected that the criminal justice system operates properly, efficiently and effectively as a tool to prevent and tackle crime. Courts are one of the important subsystems in the criminal justice system because they contain judges who are authorised by law to hear criminal cases. Courts play an important role in this system. In principle, Indonesian positive criminal law uses an alternative system to determine criminal sanctions, which means that judges have wide freedom in choosing the type of punishment (*strafsort*) to be imposed, as long as it remains within the limits set by the law. Judges have the freedom to tailor their

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decisions to the situation and context of a particular case, but they must also carefully consider that their decisions are fair and in accordance with the objectives of law enforcement (Muladi, 1995).

When sentencing in criminal cases, judges often impose sanctions that are not proportional to the commission of the crime or the consequences of the crime. As previous criminal legislation has not established a minimum system for determining the length of the sentence and the severity of the sanction, this situation is not necessarily contradicted by current criminal legislation. The current criminal law system usually uses special maximum and general maximum systems, as well as general minimum systems; however, special minimum systems are not specifically regulated. Due to the broad interpretation of judges and the lack of clear guidelines on minimum sanction limits, the imposition of sanctions often leads to uncertainty and unfairness. This can lead to decisions that are deemed disproportionate and disregard the principles of justice in criminal law.

Judges are responsible for maintaining judicial independence while performing their duties and functions. This indicates that interference from outside parties outside the judicial power is prohibited, except in matters regulated by the 1945 Constitution of the Republic of Indonesia. The overriding principle of judicial independence aims to ensure that the judicial process is free from political, social, or economic pressures that may affect the integrity and fairness of legal decisions. This principle ensures that judges can make decisions objectively and without external influence, thereby upholding the law fairly and consistently in accordance with the applicable legal provisions (Priyanto, 2005).

The judge's decision or court decision is the final result that is highly expected by all parties involved in a legal case as a dispute resolution. This decision is expected to resolve disputes in a fair manner and in accordance with applicable law, provide legal certainty, and fulfil a sense of justice for all parties involved in the case. A court decision is not only the result of a judicial process but also evidence of law enforcement that aims to objectively and equally enforce the rights and obligations of each party (Makarao, 2004).

Judges must adhere to a number of legal principles in carrying out their duties in deciding cases. Firstly, judges must not reject cases on the grounds that the law is unclear, as this principle guarantees access to justice. Secondly, decisions that have been made by judges must be considered correct (*res judicata pro veritate habetur*) and have binding legal force. Third, judges are tasked with adjudicating based on existing laws, not creating new laws (*judicis est jus dicere, non-dare*). Fourth, judges must not decide cases in which the judge has a personal interest (*nemo judex in propria causa*), to maintain objectivity and justice (Makarao, 2004), so these four principles are important guidelines that ensure that the judicial process is carried out fairly, objectively, and in accordance with applicable legal principles.

The application of law by judges must pay attention to the values of justice that live in society so that the decision can be accepted by the parties and society in general (Waluyo, 2004)). In imposing punishment, judges must ensure the upholding of truth, justice, and legal certainty, which is not only based on legal provisions but also reflects an understanding of the social context. This is in line with Article 5 paragraph (1) and Article 8 paragraph (2) of Act No. 48 Year 2009, where judges are obliged to consider various factors such as the offender's guilt, motive, manner of committing the criminal offence, life history, mental attitude, actions

after the criminal offence, as well as the views of the community. These considerations aim to make the judge's decision not only in accordance with the law, but also fair and relevant to the prevailing social norms, so by paying attention to these aspects, the judge can make a decision that is not only based on the law but also considers the social and humanitarian context, so that the resulting decision is more just and accepted by the community.

Based on the theory of judges' independence, the Panel of Judges has the minimum authority to decide on the punishment, with Article 24 Paragraph (1) of the 1945 Constitution which states that judicial power is an independent power to uphold law and justice. Article 1778 HIR, Article 189 Rbg, and Article 19 of Act No. 48 Year 2009 explain that the judge's decision must contain clear and detailed reasons, based on articles of legislation, customary law, jurisprudence, or legal doctrine. Decisions must be adequate and demonstrate the application of the law relevant to the case decided. Judges are tasked with making legal decisions that affect all parties, without interference from other parties, and this freedom is guaranteed to maintain fairness and objectivity, as well as moral accountability to society and God Almighty (Mutiaromadani, 2013).

Judges often impose a lighter sentence than the minimum stipulated by the Law on Regional Head Elections. This can be seen in the decision of the Ciamis District Court Number 1/Pid.Sus-Election/2021/PN Cms, where the judge imposed a lighter sentence than the minimum provision set by the law. This shows a discrepancy between the judge's decision and the applicable legal standards, which can cause injustice and legal uncertainty for the community, where the sequence of the judicial process is described as follows:

**Table 1.2.**

<b>Aspect</b>	<b>Details</b>
<b>Case Overview</b>	The defendant was charged with distributing money during a campaign event for Candidate No. 2 in the Pangandaran Regional Head Election on December 4, 2020.
<b>Legal Basis</b>	Article 187A (1) of Act No. 10/2016 on Regional Elections, Jo Article 55 (1) of the Indonesian Penal Code.
<b>Violation Alleged</b>	Distributing money (IDR 52,000) to influence voters, an illegal act as per election laws.
<b>Defendant's Role</b>	The defendant was instructed to distribute 11 envelopes containing IDR 52,000 each after a campaign event by a campaign volunteer named Yanto.
<b>Defendant's Argument</b>	The defendant claimed ignorance of the money distribution and was only following instructions from Yanto after the event ended.
<b>Judges' Consideration</b>	The defendant was cooperative in court, had no prior criminal record, and was a mother supporting her family, justifying a lighter sentence.
<b>Judgment</b>	Despite fulfilling all elements of the crime, the court gave a lighter sentence than the prosecution's recommendation due to mitigating circumstances.

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<b>Legal Discrepancy</b>	The judge issued a lighter penalty than the legal minimum, raising concerns about inconsistency with legal standards and potential injustice.
<b>Rationale for Sentence</b>	The court aimed to teach the defendant and the public a lesson, balancing legal theory and practical justice, while considering fairness and family circumstances.
<b>Judicial Independence</b>	Judges must remain impartial, relying on legal theory and research to ensure independent, fair, and lawful decisions as per Law No. 48/2009.

**Source:** in the decision of the Ciamis District Court Number 1/Pid.Sus-Election/2021/PN Cms

When judges are faced with a contradiction between the principles of legal certainty and justice, they must balance the two. This shift does not aim to favour one of the principles of justice or legal certainty; rather, it aims to balance the two. How judges apply and consider the law demonstrates the synergy between legal certainty and justice.

In practice, judges must consider how their decisions are not only in accordance with the applicable law, but also with the social context, morals, and the good of society. Therefore, to achieve a fair and consistent outcome, the judge's decision must demonstrate how these two principles are integrated. Therefore, a good judge's decision will demonstrate an attempt to balance humane considerations and legal convictions, resulting in a decision that is not only legally valid but also considered fair by society.

From a juridical perspective, the facts revealed during the evidence process regarding the elements of the criminal offence charged have been carefully considered by the judge. In accordance with the provisions of Article 187A paragraph (1) of the Law of the Republic of Indonesia on the Election of Governors, Regents and Mayors, the judge concluded that the defendant was legally and convincingly proven guilty.

The judge did not only focus on legal certainty, but also on fulfilling a sense of justice from a philosophical perspective. The judge decided that the defendant was the head of the family and the mother of a toddler. Taking this into account, the judge was of the opinion that the imposition of punishment should have a positive impact on education. Therefore, the decision to impose a sentence was made in such a way as to provide a lesson for the accused and the public as a whole, while ensuring that criminal punishments such as imprisonment are used as a last resort.

From a sociological perspective, the judge also noted that sentencing below the specific minimum aims to ensure that the sentence imposed is proportionate to the offence committed by the defendant. In this case, the defendant was only involved in distributing envelopes to the public, while the source was unknown. Restorative justice principles are at the centre of this sociological consideration. According to these principles, imposing a sentence below the minimum threshold is considered appropriate and relevant to the context and characteristics of the criminal offence committed to ensure that the sentence imposed is proportionate to the act committed and appropriate to the social impact.

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## CONCLUSION AND SUGGESTION

Criminal judgements below the special minimum requirements in regional head elections reflect an imbalance between legal certainty and justice. Although the law stipulates a minimum penalty, some judges decided on lighter sentences on substantive justice grounds, such as considering the defendant's mitigating circumstances, for example the defendant did not clearly know the source and purpose of the distribution of money. These decisions aim to ensure that the sentence imposed is not only in accordance with the law, but also takes into account humanitarian aspects and social impact. However, this raises the issue of legal uncertainty and has the potential to create injustice in the eyes of the public.

Laws and regulations, especially those governing regional head elections, need to be revised to provide clearer guidelines regarding the application of special minimum criminal sanctions. This is important to ensure that judges have consistent guidelines in balancing substantive justice and legal certainty. In addition, training for judges is needed to improve their understanding of how to apply the law that is not only based on written rules, but also takes into account the values of justice that live in society.

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