

# Chapter 7

## The Challenges to Improving Public Services and Judicial Operations: A Unique Balance Between Pursuing Justice and Public Service in Indonesia

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### ABSTRACT

*This chapter explores judicial perspectives on sentencing minor drug offenders in Indonesia. As a basis for the framework for this study, a concept of Goffman on dramaturgy was used to explain the dramaturgical competence of the panel judges in their attempts to show accountability to their audiences (i.e., the sphere of politics, the public, and religion). Conceptualisation of this study stems from this author former self-identity as a judge but also from the author biography since the author more familiar with the practical pressure and challenges of lower court judges. This chapter contributes to knowledge by considering that the judicial awareness of the issues surrounding justice and public acceptance led to the situation where they were attempting to present a unique balance between pursuing justice and public service.*

### INTRODUCTION

This chapter presents findings based on the theme of the book titled “The Global Challenges for Improving Public Services and Government Operations”. This study is essential to an academic and a non-academic audience, for example, the public services system working in drug sentencing, and the Policymaker. The demonstration of the judicial awareness of the issues surrounding justice and public acceptance led to the situation where they were attempting to present a balance between pursuing justice

DOI: 10.4018/978-1-7998-4978-0.ch007

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and public service to achieve broader social justice. Therefore, this chapter contributes to knowledge and deals with issues with immediate, tangible benefits to broader society. The study presented in this chapter explores judicial perspectives on sentencing minor drug offenders in Indonesia. The author conducted a qualitative study which involved interviews with participants who were District Court Judges and observation in two selected courts. This chapter presents an introduction to the research question, context to the study, the theoretical framework, the contribution to knowledge, and the layout of this chapter. The organisation of the study as follows. First, it sets out the previous study on the relationship between bureaucratic culture factors when sentencing. Second, it sets out a useful tool for interpreting how Judges tried to adjust the form of a sentence that meets public expectation. Third, it looks at several strategies to identify relevant studies in the literature. Fourth, it presents a specific reference to sentencing based on moral responsibility and exercising judicial discretion. Finally, it provides recommendations and future research directions for improving public services and government operations.

## **BACKGROUND**

In the last two decades, there have been an increasing number of studies, particularly in western countries, exploring the relationship between judicial culture factors when sentencing (Nolan, 2009; Hutton, 2006). It relates the judicial culture in this chapter to the knowledge that informs everyday practice and shapes the Judges' values such as bureaucratic culture. It is noteworthy that since early 2003 there has been an increasing number of studies, particularly in western countries, exploring the relationship between judicial culture and their performances in managing the court's caseload. Lipsky (2010), for instance, found that at street level-bureaucrats, lower court judges are subject to performing the higher court. Thus, judges in the lower court are expected to satisfy those in the higher court. This is what Lipsky describes as judicial coping strategies. Lipsky's study showed how their bureaucratic culture, which required compliance with senior judges' directives, influenced the judges. It reflects several debates about the judicial coping strategies in the literature. These debates have taken place between an international context around the judicial culture. A proponent of judicial coping strategies claims that junior judges followed senior judges' opinions (Klein & Mitchell, 2010).

On the one hand, judges are "independent" (Biland & Steinmetz, 2014) and permitted exercising judicial discretion (Thomas, 2003). In contrast, judges are "dependent" on their bureaucratic culture, which needs to give accountability to the chief justice concerning their performances in managing the court's caseload. This bureaucratic culture and managerial orientation may subvert the judicial interpretation of justice into merely expediting the court's caseload, which is perceived as an essential criterion from the higher court (Lipsky, 2010). Because of their bureaucratic culture and under the court's misplaced aim of pursuing cases-processing efficiency, they may sentence those offenders who wish to exercise their right to trial more severe than those who pleaded guilty (Ulmer et al., 2010; Ulmer & Bradley, 2006; Kramer & Ulmer, 2009).

Despite the study of the relationship between judicial culture factors when sentencing has increased since 2003, mostly stimulated by their bureaucratic culture in western countries, the focus mainly on satisfying those in the higher court, once again neglecting broader structure of audience (i.e. The sphere of politics, the public and the religious communities) —responding to the common neglect of the broader structure of the audience, many studies on sentencing exploring the broader structure of audience on sentencing, including the political determinant (Babor, 2010), the public determinant (Ulmer, 2008).

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Their studies are of importance in exploring the underlying legitimacy issue that underlies sentencing. It defines legitimacy in this study as the extent to which agencies appear to reflect others' expectations within a legitimised performance (Goffman, 1959). Within the sphere of politics, Babor (2010) focused on sentencing that would reflect the judicial accountability to the state. In terms of political accountability, there is a direct accountability mechanism in the term of how the judges interpret what justice is, in how they are doing a political job, acting in the political arena, and not just judicial activism. For example, in the United Kingdom, the state appoints judges, and for that reason, the judicial interpretation of justice presented their direct accountability to the state (Helm, 2009). In a term of public accountability, Ulmer (2008) focused on sentencing that would reflect a direct accountability mechanism to the community. For example, in the United States, the judge is democratically elected by the community, and because of that, the judicial interpretation of justice presented their direct accountability to the community (Ulmer, 2008). This acknowledges the way, within the western culture, the judges doing a political job through interpreting justice in their sentence. It is also noteworthy that since early 2013 there is one study exploring the perspectives of the judiciaries in Asian countries, mainly in its relationship between the Buddhist community and sentencing in Thailand (Yarampancha, 2013). However, it is noteworthy that the extent in which the judges' interpretation of justice appears to reflect their accountability to the broader structure of the audience (i.e. The sphere of politics, the public and the religious communities) related to issues of drug use remain unexplored. It is this relationship between the Islamic community and Indonesian judges' accountability when sentencing that the author will consider further in this study. One should remember in Indonesia; the state appoints the judges and Indonesia reflect a Muslim majority in the country.<sup>1</sup>

## **CONCEPTUAL FRAMEWORK**

In the past decades, it has applied a few studies of the concept of dramaturgy to a unique judicial approach when sentencing. There has been a growing interest in the application of a concept of dramaturgy in studying social-legal issues related to sentencing. The growing application of the concept of 'dramaturgy' is evident in socio-legal studies and criminology in their effort to better understand the political, cultural, socio-economic context of judicial sentencing in drug offences (Nolan, 2003, 2009). Again, most of these studies were carried out in western jurisdiction. Few have explored the broader context of the audience (i.e. The sphere of politics, the public and the religious communities) when sentencing minor drug offenders in developing countries and particularly in Indonesia. To explore the judges' perspective of their role in the existing system of criminal justice in Indonesia, the author drew on dramaturgy as the main conceptual framework to examine sentencing of minor drug offenders in Indonesian' context. The author considered this concept of dramaturgy to be within the broad theoretical ensembles of symbolic interaction as the author applied it to the subject of this study.

Erving Goffman used the image of role play to make sense of human interaction. According to Goffman's scheme, all humans are actors playing a unique role in various social spheres. It bases these roles for individual understanding and experience. Individuals utilise symbols during their interactions with each other. Through the management of impression, individuals present a favourable image to an audience and other actors in life's ongoing drama. Because acts are most often performed by the team, individuals depend upon others to support the image they seek to project - a sometimes tenuous link (Goffman, 1959). More recently, it has adopted the concept of dramaturgy to explain the dynamics of the

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social movement. James Nolan, for example, shows - in keeping with Goffman's interpretative metaphor that a drug court hearing, played by the court actors and viewed by the offenders, is like the drama of theatre (Nolan, 2003). The life-as-theatre metaphor was viewed as applicable to the Indonesian court on at least two levels. First, it provides a useful tool for interpreting how Judges tried to influence the judicial process. Judges' strategies in sentencing rely on negotiating the judicial process to avoid unjust sentencing on the front stage, strategy to adjust the form of a sentence that meets public expectation. Second, written scenarios and composed performances are used to present an image of the judicial perception of defendants and encourage others about the moral responsibility of sentencing.

Relatedly, the Indonesian court itself can be understood as theatre, as seen in how the individual judges were presenting a favourable image in the eye of the audiences (i.e. Political figures, the public and the religious communities). How the judges present justice in a court setting with specific relevance to drug sentencing, exercising judicial discretion, and the power relations extant in the court hearings will be examined. It drew this concept of dramaturgy to explain the justice of the participating judges as the panel judge's interaction in the court sentencing.

## **METHOD**

In terms of methods, this qualitative interview-based study involved Indonesian judges as participants. The author got ethical approval for this study from the University of Stirling. This author also adopted several strategies to identify relevant studies in the literature. First, the author identified key studies in the field (Duff & Garland, 1994) and used them as sources of further references. Second, each new document studied allowed me to identify other relevant studies and to become familiar with the journals relevant to the field. A list of the titles that the author found relevant to the studies were: International Journal of Drug Policy, British Journal of Criminology and Criminal Justice, Justice Quarterly, European Addiction Research, European Journal of Criminal Policy and Research, Criminology & Public Policy.

Conceptualisation of this study stems from this author, former self-identified as a judge, but also the author biography since the author is more familiar with the sound pressure and challenges of lower Court judges. Having worked previously as a Rural Court, the author had prior experience of the Indonesian court system. The author carried out all the fieldwork for this study in the author's capacity as a full-time doctoral researcher at the University of Stirling. The author's concern about the judicial perspective on sentencing comes from the author's learning journey arising from the author's experiences as a practising judge and a doctoral student. During the author seven years, as one of the 3034 district court judges in the nation, the author has sent less serious drug offenders to prison for standard minimum sentences ranging from one to four years, including women and young adults. However, the author believes that such terms of imprisonment are too harsh for drug offenders, its base whose involvement in drug offending on many factors, including economic factors such as for income generation. Also, the author perceives drug crimes to be less severe than the crime of murder. Previously, the author felt conflicted regarding the author role of sentencing minor drug offenders.

Regarding the sentencing behaviour of judges, they are likely to face criticism from the public and the media where lower sentences are given for drug offences, as this is perceived as judges being too soft on drug crime. Meanwhile, among the public, drug offences are perceived as a moral issue, according to the Islamic religion, and judges' sentencing will be viewed with suspicion as favouring drug offenders. Yet, when the author has asked offenders after a drug conviction what they think a fair sentence would

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be, most of them asked for lower sentences or for the opportunity to receive drug treatment. However, within the author's jurisdiction, there are no viable resources to support drug treatment in the community. Therefore, any attempt to sentence drug offenders to treatment would be futile.

Having felt that sentencing drug offenders to prison would be the best option because it would protect the public, since studying sentencing practices internationally, the author realises that there may be more effective sentencing options available for drug offenders. This sentencing option may be true of other Indonesian judges, who may have experienced a lack of understanding about alternatives to imprisonment. Sentencing a minor drug offender may touch upon judicial perceptions and accounts. The author considers that this author background may be beneficial in dealing with this aspect. By studying about it, the author presents the contemporary understanding of judges' perspectives and experiences, which might help a greater understanding of drug sentencing in delivering justice in Indonesia.

Regarding delivering justice in an Indonesian context, the author identified from the judicial training that the sentencing of drug offenders should cover at least three dimensions, juridical, philosophical, and sociological. Juridical is concerning executable sentences; philosophical in the term of the aims of sentencing and sociological concerning public acceptance. Therefore, the author considered these three dimensions to be essential within the Indonesian context. The study, which forms the basis for this chapter offers insight into these three dimensions of sentencing in practices. Although the Chief Justice permitted to study, they exerted no influence on any of the fieldwork, data analysis or interpretation.

Ultimately, having the previous judicial culture not speaking about the public concern, the participants wished that their voices were truly acknowledged through this study. From their provocative intonation, thoughtful response, and thoughtful expression, the participants' responses aimed not only to answer the author interview questions; they also seemed to raise their concerns that most minor drug offenders brought into the court were coming from 'lower class (1)'. The judicial perception of structural inequality drives the moral responsibility of the panel judges. The influence of inspection, the tension with police, the National Anti-Narcotics Agency of the Republic of Indonesia (BNN) and the prosecutor often become a challenge. This challenge led most of the participants to adjust their interpretation of justice into circumstances. It led the substantial minority of the participants to exercise their discretion by the 'substantial minority' of the author referring to the numerical minority of the study participants that share common perspectives.

## **RESULTS**

This result section presents a specific reference to sentencing based on moral responsibility and exercising judicial discretion. Subsequently, it provides recommendations and future research directions for improving public services and government operations.

### **A Moral Basis for Sentencing**

The substantial minority of the participants (i.e. Five from 31) conveyed that one should uphold one's moral responsibility both at the deliberation on sentencing and at the court hearings. Consider, for example, Judge 19's comment: "I think drug users have become victims of criminalisation" (Judge 19). From this judge's perspective, identifying them is strategically appropriate to elicit public support for a sympathetic response.

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Concerning an individualised approach to sentencing minor drug offenders, the substantial minority of the participants showed that the offender's background behind the drug dealing and the stigmatising effects of sentencing were compassionately considered. Seen in this way, the substantial minority of the participating judges considered an individualised approach to sentencing. For example, as mentioned by Judge 14 below:

*... The meaning of possession should be clarified because it is unfair to apply the drug law without considering it from a variety of angles. For example, we consider if the case attracts public attention, the effect of sentencing, the background behind drug dealing and whether it is for doing business or for lack of income or over making an income. (Judge 14)*

As the above excerpt illustrates, the case, which attracts public attention to the background behind drug dealing, is often considered by the substantial minority of the participants regarding the impact of sentencing on the public. Therefore, the substantial minority of the participants are considering the stigmatising effects of sentencing. While the substantial minority of the participants' deliberation of individualised approaches to sentencing seems implicit to rely on 'risk-based' assessment, there is an implicit expectation from them, which is that their assessment would minimise the risky behaviour of sentenced offenders. For example, dialogues between Judge 14 (Panel) and an Offender was taken from a court hearing observation illustrates this 'risk-based' assessment:

**Judge 14 Panel:** *How long have you used drugs?*

**Offender:** *Three months*

**Judge 14 Panel:** *When did you know about cannabis?*

**Offender:** *Since high school*

**Judge 14 Panel:** *What did you do when in high school?*

**Offender:** *I used drugs*

**Judge 14 Panel:** *Why do you accept drugs?*

**Offender:** *I accept drugs for a fee Rp50, 000.00 (around €4.00)*

**Judge 14 Panel:** *What happens if you do not use drugs?*

**Offender:** *I overthink. (Extracted from court hearing Observation Notes, Judge 14 Panel)*

From the above excerpt, we can see that participating Judge 14 (Panel) pays attention to the offender's risk of becoming dependent on drugs. This finding suggests that the substantial minority of the participating judges across the two jurisdictions compassionately consider their sentences from a variety of angles, including 'risk assessment' based, and considering their role to minimise the stigmatising effects of sentencing offenders.

### **The Influence of Public Opinion and Media**

Another factor that complicates the pursuit of justice seems to stem from public opinion and the media's portrayal of sentencing minor drug offenders. Despite judges not been elected by the community, several participants (i.e. Nine from 31) explain that, sometimes, they consider the public opinion on sentencing. The following extract illustrates this point:

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*If the sentencing is that it should convict the offender, then the public opinion should be of no influence. However, if the sentencing is non-conviction, then the public opinion could influence. However, public opinion is not the ultimate point of reference, it is only one ingredient; it has become seasoning, and it becomes the salt part. (Judge 9)*

The above excerpt highlights the community's understanding that the accused person was innocent, and this was why they asked the judges to set the offender free. These members of the community knew about the alibi and understood that the person was innocent. The substantial minority of the participants were aware that the community wanted the offender to be free and considered that there was an alibi. In this situation, the judges accepted these public opinions, and this led to the accused person not being convicted. Therefore, it could be considered that the role of public opinion acts as an "add-in" to non-conviction. In Rural Courts, the substantial minority of the participants (i.e. Two from 11) showed that public expectation was considered ensuring that the sentencing met the society's expectation: "If we believe that the offender is purely a drug user, then we will sentence them as a drug user. This is what society expects; hopefully, our sentence will help" (Judge 27). As shown, once the judicial beliefs met with societal expectation, Judge 27 would hope that their sentence would help the drug user. Therefore, public expectation is a source of knowledge that adds value to the justification of sentencing. Yet the justification for this form of knowledge from the public needs to be considered with caution. In Urban Courts, several participants (i.e. Two from 17) show how they were cautious in filtering public opinion:

*We should distinguish the level of public opinion, and whether it is the journalist's opinion. Therefore, if the journalist is writing about their own opinion, then it will be regarded as the journalist's opinion that is published and not necessarily the public opinion. If the community's opinion is being reported by the journalist, we will regard it as public opinion. (Judge 9)*

As the above excerpt illustrates, the solution in responding to public expectation is to filter it and instil in the judge the cultural value of considering public opinion. However, both aim for clarity that filtered public expectation often affects judicial sentencing. Such positioning contrasts with the judges' views about being autonomous. In justifying their sentencing, several participants assessed the impact of filtering public opinion into their sentencing. As Judge 14, for example, mentioned: "... If we consider the case attracts public attention, the effect on sentencing (Judge 14). This excerpt illustrates that the case which attracts the public attention is often considered by several participants regarding the impact of sentencing on the public. Therefore, several participants are justifying their sentencing based on public expectations.

### **Exercising Judicial Discretion**

The substantial minority of the participating Rural Court judges (i.e. Two from 11) recommended the need for the judge to have an active role in the interpreting the sentencing options with the local BNN, the offenders, and the offender's families:

*I have a dual role as a public relations officer, so I can inform the head of local BNN (2) in the rural jurisdiction about the SKB (3) and about providing rehabilitation... We also advised their families at the court hearing that the aim of these sentences was a more active approach to treatment. (Judge 28)*

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Judge 28 shows that an active role in the negotiating process inside and outside the courtroom will allow the local BNN, the offenders, and the offender's families to be better informed of their right to treatment. During fieldwork, there seemed to be a lack of awareness about the current Joint Agreement about treatment provision (SKB) among the prosecutor, the police who were witnesses, and the offender's lawyer. In this situation, it raised concerns whether the offenders were aware of their right to treatment. To seek a balanced power relation between the parties in negotiation, the substantial minority of the participating Rural Court across the two jurisdictions aimed to provide a lawyer to defend the accused person and to speak in mitigation. The following extract from a court hearing illustrates this point:

*Judge 24 Panel: Did you understand the indictment? We will provide a free lawyer for you; the Government will pay for this lawyer. The proceedings will continue next week to hear your defence from your lawyer (Extract from court hearing Observation Notes, Judge 24 Panel).*

As Judge 24 (Panel) highlights in the court hearing, the aim was to balance the power relation between the offenders and the prosecutor. At the court hearing, the substantial minority of the participating Urban Court (i.e. Two from 17) deliberately attempted to balance this power relationship. Consider, for example, Judge 9's (Urban) comment:

*Sometimes, the judge should stand behind the offender because the offender, who has no defence lawyer, is in a vulnerable position. In this situation, the judge should balance and position the offender equally and uphold the offender's rights against the prosecutor. Only within these conditions would the notion of a fair trial exist. (Judge 9)*

The above excerpts highlight Judge 9's attempt to balance power relations by 'standing behind the offender'. Judge 9 attempted to balance the offender's position equally and support the offender's rights against the prosecutor. In the situation where the prosecutor is deemed to ask tendentious questions, judges could ask the prosecutor to deliver open-ended questions. In the situation where the prosecutor is deemed to overuse law terminology, judges could ask the prosecutor to use plain language. In the situation where the prosecutor is deemed to make claims about conviction, the judges could ask the offender to make a counterclaim. For Judge 9, insisting on upholding procedure is a deliberate strategy to reconcile the power imbalance between the prosecutor and the offenders. They displayed another attempt to balance power relations in the substantial minority of the participating Urban Court capacity to ensure that rehabilitative support is in place. The following extract illustrates this point:

*Once we sentence into rehabilitation, then the cost of rehabilitation should be a burden to the state and not to the offender. Therefore, we are not looking at the offender's social background or whether the offender is wealthy or poor. Therefore, once been sentenced to rehabilitation, the cost will be covered either by the state or by the public hospital. (Judge 8)*

As shown, Judge 8 (Urban) attempted to ensure that the offender's social class did not become an obstacle to the offender's access to rehabilitative support. The cost of rehabilitation was a burden to the state once the panel judge sentenced the offender to rehabilitation. They require the judges to consider the offender's acceptance of the drug sentencing. Therefore, the judge's role was also presented an acceptable form of sentence in the eyes of the offenders. Since the judge could do so, the tactic is to discount



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the sentencing. The substantial minority of the participants (i.e. Two from 31) noted that responding to an offender's family who comes to her/him and asks for help would reduce the length of sentencing: 'I see no problem with allowing intervention so long as the length of sentencing is not too far a departure from the standard minimum (Judge 2). At Judge 2 shows, departing from the standard minimum is seen as acceptable for the offenders and the offender's family to negotiate the acceptable form of the sentence. The substantial minority of the participating Rural Court seeks agreement among members of the panel of judges. Consider, for example, Judge 23's (Rural) comment: 'On my first appointment as the judge, Judge 24, one of our members, I said to Judge 24: how if we categorise the offender. They decide the judicial agreement to sentence the offender to rehabilitation by three-panel judges. Thus, the sentencing to rehabilitation results from the negotiated agreement.

The substantial minority conveys the message about the need for judges to be sensitive in responding to offenders who present in court for using drugs recreationally without the accompaniment of adequate information and assessments to support their charge. It is the view of the substantial minority of the participating Urban Court that they should not punish those offenders who use drugs. This does not mean that he only takes a lenient approach, but that as an acceptable strategy, the court should start with a lenient approach to drug offences and expansion after achieving wider public support. How this is presented may depend on the messenger. In their role as a public relations officer, the substantial minority of the participating Urban Court explained that, sometimes, they took advantage of the media coverage to send the message to the public that they attempted to follow the rule:

*It (sentencing) was appreciated, also, by the National Anti-Narcotics Agency of the Republic of Indonesia (BNN) and by the voluntary sector on anti-anarchy to drug users (GRANAT). The case was reported, also, on Detik (4) (online newspaper). They all appreciated it. (Judge 4)*

The comment from Judge 4 (Urban) above illustrates this form of social justice. Judge 4 considers that media coverage is an excellent opportunity for sending a message that reaches the public, that rules are being followed in one Rural Court, Judge 28 offers unique approaches on how to handle the media. Judge 28 mentions that the media's role is helpful in strategically disseminating the judicial approach to treatment provision, particularly when the judge already had an amicable relationship with the media. Judge 28 believes it is strategic to disseminate information about the six ministries' (SKB) Joint Agreement about treatment provision. Judge 28 comment is apt:

*After downward departure from the minimum sentencing, the prosecutor questioned. Then we offer them an explanation; we use the SKB as the basis of our sentencing... I offer them a copy of SKB and, also, continuously inform them... I shared this SKB through the media, and also; I informed the media continually that, once the members of the community use drugs, it would be better for them to be referred to rehab. (Judge 28)*

The above excerpt highlights Judge 28's strategic relationship in disseminating the drug user's referral to rehabilitation. They must cultivate a relationship with the media. For Judge 28, this is a deliberate strategy of presenting social justice to the public. Judge strategic relationships are processed through inter-agency coordination and sharing information. Judge 28 believes it is a relationship that inter-agency communication should proactively cultivate, and Judge 28 will cooperate with the media to build coop-

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eration and information sharing. It was this inter-agency cooperation that channelled a more “informed public opinion” and more reasonable and realistic public expectations of rehabilitating drug users:

*I can inform the head of local BNN in the rural jurisdiction about the SKB and about providing rehabilitation. After several attempts by the media to help inform the public about the SKB. The process of rehabilitation is started before they bring the case to the court. We advised their families, also, at the court hearing, that the aim of these sentences was more an approach to treatment. (Judge 28)*

Here, Judge 28 (Rural) highlights the substantial minority of the participating Rural Court judges' relation with the local BNN, media and public in seeking wider support for offenders' rehabilitation. The substantial minority of the participating Rural Court's efforts and media support, in informing the local BNN and the public about the agreement to provide rehabilitation, shaped the earlier process of rehabilitation before the case was brought to the court.

In their attempts to pursue social justice, the substantial minority of the participants highlighted the importance of shaping the Supreme Court and Government policy. There was an enormous variation that existed between different courts. In the Urban Court, the substantial minority of the participants explained that their attempts received support from the Supreme Court. From 2009 until 2014, there seemed to be some changes in how the Supreme Court policy dealt with minor drug offenders. Thus, pursuing justice is reflected in the form of support from the Supreme Court. They showed this pursuit of justice in the following statements: “... Thank God that the Supreme Court heard my opinion (five years ago). I have reflected these in the Supreme Court internal regulation (SEMA) and the Supreme Court external regulation (PERMA)” (Judge 6).

## **Discussion**

This section aims to discuss the overall context of the study, particularly the findings of the challenges of balancing the pursuit of justice and doing public service. In such conditions where the substantial minority of participating judges received public trust and confidence, public expectation and the media's portrayal often decide whether minor drug offenders should be imprisoned or facilitated to rehabilitative support. The term “the public” used here refers to the offenders, the offender's family, the visitors inside the courtrooms, the community protests, the anonymous informant when the judge meets people in the community, and the Sunni Islamic community. The public expectation regarding rehabilitative support to minor drug offenders apparently facilitated the emergent rehabilitative model. The public expectation is considered by a substantial minority of participating judges as a source of knowledge that adds value to the justification of rehabilitative support. In such conditions where some participating judges received public suspicion for the issues of corruption, these conditions may put the judges in an embarrassing situation. These conditions may make the overall image of judicial reputation discredited. These conditions have consequences for the individual judges: they saw the sentencing to prison for drug offences as a way to insulate a substantial minority of participating judges from social prejudice. This suggests that the justification for imprisonment is a conditional subject to public trust since The Public often sees rehabilitative support as being a sign of corruption to favour the offenders undermines the judicial performance. Most of the participants avoid attracting public accusation. We can see this evidence as a sign that it often justifies imprisonment is often as a judicial attempt to minimise lapses in performance. From here it will be shown that in such a situation where the imposition of the sanction

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is made conditional subject to public acceptance, it challenges the participants in this study to present the balanced presentation between pursuing justice and delivering public services.

In terms of the rule of law in this context, a substantial minority of participating judges still could make their application of the law to achieve justice in the court sentencing (Mustafa, 2018; Mustafa 2020). They were aware of the legal code that is harsh, which raises issues surrounding justice. They were also aware of the importance of public acceptance in sentencing. Their awareness of the issues surrounding justice and public acceptance led to the situation where they were attempting to present a balance between pursuing justice and public service. As public servants, they knew that they were expected to provide excellent service to meet the public expectations. To do so, they displayed interaction with the community. For example, they displayed compassion and were at the time morally expected to reflect the community expectation of moral justice which is based on Sunni Islamic teaching. In this situation, such influences shape the individual to adapt to situational expectations (Goffman, 1959). The 'compassionate judges' in the study court displayed sensitivity towards minor drug offenders, and this encouraged the substantial minority of the participating judges to redefine the sentencing option beyond imprisonment. This option included a sentencing reduction to release the minor drug offenders from prison sooner and enabling them to receive treatment outside prison. We interpreted this demonstration of judicial compassion and supportive approach in the study court as an acceptable response in the eyes of the public (Mustafa et al., 2020; Mustafa, 2020).

## **SOLUTIONS AND RECOMMENDATIONS**

At the judicial culture level, there is a need for a better performing system that would reward the judges who exercise reasonable discretion in drug sentencing rather than following the minimum sentencing.

## **FUTURE RESEARCH DIRECTIONS**

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.

## **CONCLUSION**

In conclusion, to gain an acceptable response from the public, the substantial minority of participating judges also adopted a humanistic approach which considered the human rights aspect of minor drug offenders. The substantial minority of the participating judges also attempted to inform the public that the existing approach to the war on the drugs had lost its direction. The substantial minority of the participating judges have a dual role as public relations officers. This role allows them to share the treatment provision (SKB) with the media. To do so, the substantial minority of the participating judges take advantage of the media coverage to send the message to the public about the judicial approach to treatment provision. They will share information with the journalists at the participants' offices daily. They shared the treatment provision (SKB) with the media to ensure understanding of the minor drug

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offenders' referral to rehabilitation. Then, they used the comments from the media and the public to adjust their interpretation of justice. In this way, they disseminated their approach and considered the public opinion so they could gain insight into the level of public acceptance. Media and public comment also functioned as an important mechanism in helping the participants to earn public trust, to gather an understanding of public concern and to adjust their interpretation of justice. This chapter contributes to knowledge by considering that the judicial awareness of the issues surrounding justice and public acceptance led to the situation where they were attempting to present a balance between pursuing justice and public service.

### **ACKNOWLEDGMENT**

I thank Dr Margaret Malloch and Dr Niall Hamilton Smith for their valuable comments on earlier versions of this chapter. The Indonesian Endowment Fund for Education (LPDP) (grant number supported this research by S-259/LPDP/2013).

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### **KEY TERMS AND DEFINITIONS**

**BAPAS:** The correctional officer for children.

**BNN:** The National Anti-Narcotics Agency of the Republic of Indonesia.

**Drug Sentencing:** The decision-making of all the panel judges. Other terms related to drug use and terms used in the qualitative study are discussed and defined throughout this chapter, when appropriate.

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**Drug Uses:** The illegal use of drugs, controlled under the Indonesian 2009 Drug Act. The term ‘drug use’ may appear in this chapter as part of quotations from the participants.

**Illegal Drug:** Is the drugs, controlled under the 2009 Indonesian Drug Act, such as cannabis and methamphetamine.

**KUHAP:** The Criminal Law Procedures Code.

**PERMA:** The Supreme Court external regulation.

**SEMA:** The Supreme Court internal regulation.

**SKB:** Joint Agreement of six ministries.

**ENDNOTES**

- <sup>1</sup> There 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 chapter is not an accurate classification, but merely reflects how the participants’ categories certain strata of Indonesian society.
- <sup>2</sup> BNN is the National Narcotics Agency. The number of drug-dependent individuals undergoing drug rehabilitation at the National Narcotic Board (BNN) treatment Unit at Lido-Bogor (Urban).
- <sup>3</sup> SKB are the six ministries’ Joint Agreement about treatment provision. The current regulation (SKB) ruled that ” (1) those convicted, who have substance use disorder and victims of circumstances and are not related to drug dealers, are eligible for medical rehabilitation and social rehabilitation. This rehabilitation is carried out in prison or detention centres and rehabilitation institutions that have been designated by the Government. (2) Those convicted, who have substance use disorder and have a dual function as drug dealers, are eligible for medical rehabilitation and social rehabilitation in prisons or detention centre” (SKB Regulation number 01/2014).
- <sup>4</sup> The Detik.com is an online newspaper, meaning ‘time in a second’. People can subscribe to receive this timely and updated news. (1) The statistical indicators are not an accurate indicator, but merely reflect how the Policymaker shows the specific number of drug users in Indonesia.

*The Challenges to Improving Public Services and Judicial Operations***APPENDIX****Profile of Courts**

It locates the urban district court in South Indonesia and can process 327 drug cases with an average of about 14 cases of drugs per month processed between January 2013 and November 2014. This process 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 of drugs. It locates the rural district court in North Indonesia. The court had also sentenced to custody 100% of the people convicted of the sale of drugs and possession of drugs.