

Aspects of Justice towards Criminal Disparity for Drug Abusers



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ABSTRACT: Convicted narcotics abusers after being imprisoned comparing the imposition of punishment with other convicts will feel that their detention period is much longer than that of other convicts even though they have the same criminal offense. Based on these legal issues, the problems to be discussed are the factors causing disparity in judges' decisions against narcotics abusers and the basis for judges' considerations in imposing different decisions on narcotics abusers based on Decision Number 156/Pid.Sus/2021/PN.Met, Decision Number 39/Pid.Sus/2020/PN.Met and Decision Number 134/Pid.Sus/2021. The methods used in this research are normative juridical and empirical juridical approaches using primary and secondary data. Data collection using the literature study method and supported by the results of research interviews. Based on the results of the study, the factors causing disparity are that there are no guidelines for judges in deciding criminal acts of narcotics abuse, then the judge factor is due to the judge having very broad freedom so that it gives the judge discretion to impose a sentence. Juridically, the judge's consideration is based on legal facts revealed in the trial, while non-juridically is the judge's judgment outside of the revealed legal facts. Judges in making legal considerations must be able to explicit the decision and in the consideration of the judge is expected that the judge can strive for drug abusers to be rehabilitated and can humanize humans.

KEYWORDS: Disparity, Judges, Narcotics

I. INTRODUCTION

Criminal disparity (disparity of sentencing) is constructed as the application of unequal or unequal punishment by judges to the same crime (same offense) or to criminal acts whose dangerous nature can be compared without a valid basis of justification. The criminal disparity will have fatal consequences, when it is associated with correction administration, namely the convict after comparing the crimes then feels that he is a victim of the judicial caprice and will then make the convict not respect the law, even though respect for the law is one of the targets in the purpose of sentencing (Jainah & Suhery, 2022). It can even lead to demoralization and anti-rehabilitation attitudes among convicts who are sentenced to more serious sentences than others in comparable cases (Widyaristanty & Berlian, 2021).

Cases of narcotics abuse in Metro City are currently the most frequent cases based on data taken from SIPP Metro City 2021 that 51.05% of criminal cases at Metro Class IB District Court are cases of narcotics abuse, this is a serious threat to the people of Metro City because the impact resulting from narcotics is very dangerous for users. As above, the many cases of narcotics abuse cannot escape the role of the judge as the party deciding the case from the occurrence of a violation of the law, the judge plays a very important role as a determinant of the future of law because every judge's decision will become the center of public attention. Judges do not only act as mouthpieces for laws (*la bouche de la loi*), but judges also act as law discoverers (*rechtvinding*) in accordance with cultural values that live in society, especially Pancasila values (Sinaga, 2021). The heavy duty of the judge as the party deciding the case requires the judge to really master the law (Permana, 2021).

The disparity can be seen in the decision no. 156/Pid.Sus/2021/PN.Met Decision No. 39/Pid.Sus/2020/PN.Met and Decision No. 34/Pid.Sus/2021/PN.Met shall be punished under Article 127 Paragraph (1) Law No. 35 of 2009 concerning Narcotics which is the use of Narcotics class I for oneself with different criminal penalties, namely, imprisonment for 10 (ten) months, rehabilitation for 4 (four) months and 20 (twenty) days, and imprisonment for 3 (three) years, so that the different sentences create a disparity.

Even though the position of the judge should be the key to the success of law enforcement which is the main goal of people's lives in the country. The judge is an official of the State judiciary who is authorized by law to adjudicate. Judging is defined as a series of actions by judges to receive, examine and decide cases based on the principles of being free, honest and impartial in court proceedings. In giving justice, the judge must first examine the truth of the events submitted to him, then give an assessment of the event and relate it to the applicable law. After that the new judge can pass a decision on the incident and therefore the judge in

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giving a decision must be based on an interpretation of the law that is in accordance with the sense of justice in society. Sometimes polemics in society arise when judges sentence a different decision for the same crime (Tjanggo et al., 2022).

The different philosophies held by court judges can be a factor causing criminal disparities in cases of narcotics crimes. For example, if the panel of judges at the district court has a backward looking philosophy of retributive sentencing, while the panel of judges at the Supreme Court has a utilitarian sentencing philosophy, then what happens in the product of their decisions is criminal disparity. But if the panel of judges at the district court, high court, and the Supreme Court both have a forward-looking orientation in imposing sentences (according to the utilitarian view), then the disparity in sentences can be minimized (Nurdin, 2018). Based on the background above, the author will describe in detail the factors causing the disparity in the judge's decision on narcotics abuse based on the Metro District Court Decision No. 156/Pid.Sus/2021/PN.Met, No. 39/Pid.Sus/2020/PN.Met and No. 134/Pid.Sus/2021/PN.Met along with the basis for the judge's considerations in making a different decision.

Definition of Narcotics Crime Narcotics crime is an act that can be punished under Law Number 35 of 2009 concerning Narcotics. Based on the Articles of the Narcotics Law, it is known that the perpetrators of the criminal act of narcotics abuse are threatened with imprisonment or rehabilitation. The regulation regarding criminal acts against narcotics abusers in Law Number 35 of 2009 concerning Narcotics is contained in Article 127 of Law Number 35 of 2009 concerning Narcotics states that:

1. Every User :
 - a. Narcotics Category I for oneself shall be punished with imprisonment for a maximum of 4 (four) years;
 - b. Narcotics Category II for individuals shall be punished with imprisonment for a maximum of 2 (two) years; And
 - c. Narcotics Category II for oneself shall be punished with imprisonment for a maximum of 1 (one) year.
2. In deciding a case as referred to in Paragraph (1), the judge must pay attention to the provisions referred to in Article 54, Article 55 and Article 103.
3. In the event that the abuser as referred to in Paragraph (1) can be proven or proven to be a victim of Narcotics abuse, the Abuser is required to undergo medical rehabilitation and social rehabilitation (Law Number 35 of 2009 concerning Narcotics (State Gazette Number 135, Supplement to State Gazette Number 5062).

Disparity as a difference between each decision cannot only be seen from the difference in the sanction of each decision determined by a court for the same case. That the general public, represented by the media, considers that there is disparity and subsequent discrimination in a case that is decided by imposing different sanctions, does not automatically mean that disparities do occur in these cases. Disparities must be seen as differences in the perspectives of judges who decide on a case that is the same in interpreting one or more sections in the formulation of the law applied in a case (Busnarma, 2019). These different interpretations then logically rationally affect the judge's considerations in deciding whether or not the defendant is guilty, or the severity of the imposition of sanctions on a defendant who is legally and convincingly proven to have committed an act prohibited by law.

Whereas in criminal case decisions there is a gap in sentencing known as disparity. From this understanding, it can be seen that criminal disparities arise because of the different sentences imposed on similar crimes. This criminal conviction is of course the punishment imposed by the judge against the perpetrators of a crime so that it can be said that the figure of the judge in terms of the emergence of disparities in sentencing is very decisive. Disparities can cause legal problems, including, namely:

1. Criminal disparity will have fatal consequences, when it is associated with "correction on administration" or convict development. Convicts who after comparing crimes then feel they are victims of "the judicial caprice", will become convicts who do not respect the law, even though respect for the law is one of the targets in the purpose of sentencing (Abdurrachman et al., 2012).
2. The problem of criminal disparity is the failure of a system to achieve equality of justice in a rule of law and weakens public confidence in the system of administering criminal law.
3. If the disparity in punishment cannot be overcome, namely the emergence of demoralization and anti-rehabilitation attitudes among convicts who are sentenced to more serious sentences than others in comparable cases.

The method used in this study is a normative and empirical juridical approach that uses primary and secondary data. The data collection method used the literature study method and was supported by interviews with informants in this study consisting of Judges at the Metro Class IB District Court, Peradi Advocates of Metro City, and Lecturers of the Criminal Law Department at the Faculty of Law, University of Lampung. Qualitative data analysis must be demonstrated with references and with appropriate implementation techniques.

The normative juridical approach is carried out by the author in the form of an attempt to find the truth by looking at and paying attention to the principles that exist in various laws and regulations, especially those related to the problems studied, while the empirical juridical approach is an approach taken to study law in reality, both in the form of judgments, behaviors, opinions, and attitudes related to the process of sentencing by judges which contain elements of criminal disparity in decisions of narcotics abusers. Data analysis was carried out qualitatively. Qualitative analysis is the analysis used in this study. Qualitative analysis is a research procedure that produces descriptive data, namely what is stated by respondents or informants in writing or orally and real

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behavior. Then, from the results of the analysis, conclusions are drawn inductively, namely seeing the general nature of reality and then drawing specific conclusions.

II. DISCUSSION

Factors that influence disparity are legal factors and judge factors. 35 of 2009, then the factor of judges is because judges have very broad freedom to choose the type of punishment (strafsoort) they want, thus giving judges the freedom to impose sentences, this often causes differences in sentences or is often called criminal disparity.

A. Factors Causing Criminal Disparities

The legal factor of criminal disparity can be understood by using fundamental and comprehensive methods, in a legal regulation, it contains the legal principles that form the basis for it. Said by Satjipto Rahardjo, that the principle of law can be interpreted as the "heart" of legal regulations. Karl Larenz in his book "Methodenlehre der Rechtswissenschaft" said that legal principles are ethical legal measures that give direction to the formation of law. The legal principle contains ethical demands as an intermediary between legal regulations and the social ideals and ethical views of society.

Formation of the rule of law, the main principle is built in order to create clarity about the rule of law, that principle is legal certainty (Hazmi, 2021). The idea of the principle of legal certainty was originally introduced by Gustav Radbruch in his book entitled "Einführung in die Rechtswissenschaften". Radbruch writes that in law there are 3 (three) basic values, namely legal certainty (Rechtssicherheit), justice (Gerechtigkeit), and expediency (Zweckmassigkeit) (Sulardi & Wardoyo, 2015).

The existence of the principle of legal certainty is a form of protection for justice (justice seekers) against arbitrary actions, which means that someone will and can obtain something that is expected in certain circumstances. Legal certainty is needed for legal purposes, thus laws and regulations related to narcotics abusers must have the goal of legal certainty so that the law does not raise doubts or multiple interpretations and does not create contradictions and can be implemented properly (Moho, 2019).

Article 127 of the Narcotics Law No. 35 of 2009 recognizes 3 types of people including Narcotics Abusers, Narcotics Abuse Victims and Narcotics Addicts which are listed in the general provisions of Article 1 of the Narcotics Law No. 35 of 2009. Article 1 Number (15) says abusers are people who use Narcotics without rights or against the law. Explanation of Article 54 concerning Victims of Narcotics abuse is someone who accidentally uses Narcotics because he was persuaded, tricked, forced, and/or threatened to use Narcotics and Article 1 Number (13) says Narcotics Addict is a person who uses or abuses Narcotics and is in a state of dependence on Narcotics, both physically and psychologically. An explanation regarding narcotic dependence is stated in Article 1 Number (15) narcotic dependence, namely a condition characterized by an urge to use Narcotics continuously with increasing doses to produce the same effect and when its use is reduced and/or stopped suddenly, it causes typical physical and psychological symptoms (Suhada, 2019).

Narcotics abuse, namely someone who has no interest in using narcotics regulated in the Narcotics Law No. 35 of 2009 states explicitly that narcotics can only be used for the benefit of health services and/or the development of science and technology, this is clearly stated in Article 7 of the Narcotics Law (Henry, 2018). The use of Narcotics Group 1 is limited only for the purpose of developing science and technology and for diagnostic readings and laboratory reagents after obtaining approval from the Minister on the recommendation of the Head of the Drug and Food Control Agency.

These restrictions are contained in Article 8 Paragraph (2) of the Narcotics Law. So that if someone violates the provisions of the article, they can be subject to criminal sanctions. The legal factors that affect criminal disparity will be explained by the author through the results of the interviews that the author has conducted, the results of these interviews are related to the problems created through legal factors that give rise to criminal disparities. Relating to Victims of drug abuse. The word "persuaded" creates something that is almost similar to a narcotics abuser so that a victim of narcotics abuse will be charged the same as a narcotics abuser for himself, in fact it is rather difficult to distinguish someone who is persuaded to use narcotics and wants to use narcotics for himself, thing this is almost similar so that if an incident occurs when someone persuades another person to use narcotics and then the other person wants to use it, then he can be called a narcotics abuser, not as a victim of narcotics abuse.

Dicky Syarifudin as a judge at the Metro District Court emphasized that someone who was persuaded could be said to be a victim of narcotics abuse because the defendant did not know what the contents of the narcotics were. however, as an example that someone who abuses narcotics must have started between being persuaded or offered by someone to use narcotics due to environmental factors that have an adverse effect on the perpetrators of narcotics abuse

Dicky Syarifudin emphasized that a narcotics abuser can be said to be a narcotics abuser and can be identified after the completion of the trial based on the revealed legal facts, while a narcotics abuser can be identified as an addict after the National Narcotics Agency has issued an examination result showing the defendant is addicted to narcotics, both physically and psychologically.

Based on the description above that Decision No. 156/Pid.Sus/2021/PN.Met and Decision No. 134/Pid.Sus/2021/PN.Met is a narcotics abuser because there is no effect of dependence on narcotics which can interfere with the psyche of narcotics abusers and there are no withdrawal symptoms that arise if narcotics use is stopped while Decision No. 39/Pid.Sus/2021/PN.Met is a

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narcotics addict after the results of an examination from the National Narcotics Agency which stated that the defendant had a severe addiction to narcotics so that it disturbed his psyche and if narcotics use was stopped he would experience withdrawal symptoms (Toliango, 2016).

Problems in the legal factors that affect disparity are between the abusers themselves and the dealers or in Article 127 and Article 112 that it is difficult for judges to distinguish between abusers for themselves and dealers because in Article 112 it says own, keep, control even though the abuser himself also owns, stores and controls according to Tri Andrisman's words regarding legal factors that affect criminal disparity.

Tri Andrisman as a Lecturer at the Faculty of Law, University of Lampung said that the legal factor for criminal disparity is regarding Article 112 and Article 127 which have multiple interpretations, that the content in Article 112 states that everyone who owns, stores, controls, or supplies narcotics is subject to a minimum sentence of 4 (four) years and a maximum of 12 (twelve) years, while for evidence weighing more than 5 (five) grams, a minimum sentence of 5 (five) years is imposed and a maximum of life imprisonment. Articles 112 and 127 of the Narcotics Law result in multiple interpretations because an abuser himself must own, keep, control, so the Narcotics Law does not regulate clearly, and creates legal uncertainty in its application.

Dicky Syarifudin stressed that each case is unique and there will never be the same case. Therefore, it is necessary to dig fundamentally and thoroughly from the revealed trial facts. Articles 112 and 127 do not reach legal certainty but by prioritizing the value of justice over certainty, the decisions made will be as fair as possible, even though they do not achieve justice, Dicky Syarifudin again emphasized that at least he had tried for justice.

Another problem arose. Soerjono Soekanto said that disruption of law enforcement from the point of view of legal substance could be caused by non-compliance with the principles of law formation. The principles of law enforcement are not understood by law enforcers so that the root cause of narcotics has not been resolved, there is a crime of bribery as an example in the case of Kombes Pol Riko Sunarko being removed from his position as Kapolrestabes Medan. The dismissal was allegedly the result of an alleged bribery case from a drug dealer who also dragged Riko's name. It is the drug dealers who should be sentenced to prison so that narcotics can be used for what they should be, as stated in the purpose of the Narcotics Law Article 4 which says to ensure the availability of narcotics for the benefit of health services and/or the development of science and technology. Judges who should be able to see legal facts that are revealed in depth and comprehensively through a casuistic approach, judges must be able to see the motives, goals, future of the perpetrator, the past of the perpetrator, and the inner attitude of the perpetrator, these considerations must be included using sentencing guidelines.

The Criminal Code must have guidelines made by legislators which contain principles that need to be considered by judges in imposing a sentence, there are only rules for giving a sentence, on the one hand it can be ideologically justified but on the other hand it contains weaknesses related to the existence of judicial discretion that is too broad due to the absence of sentencing standards. The purpose of the principles that need to be considered as in Law no. 1 of 2023 Article 54 Paragraph (1).

The judge's factor is explained as the judge has very broad freedom to choose the type of crime (strafsoort) he wants, the factors that influence the judge in sentencing the defendant, due to the existing criminal laws in Indonesia, both general and special laws. of a special nature does not strictly regulate the minimum limit of criminal penalties for perpetrators of criminal acts. The absence of a minimum threshold gives judges the flexibility to impose sentences. So this often creates differences in punishment or often called criminal disparity. Article 8 Paragraph (5) Law No. 48 of 2009 concerning Judicial Power, it is stated that considering the severity of the crime, the judge must also pay attention to the good and bad characteristics of the defendant.

In this case the consideration of the severity and lightness of the sentence in the judge's decision must contain the idea *des recht*, which includes 3 elements, namely justice, legal certainty and expediency. Legal certainty lies in statutory articles. The benefit lies in the purpose of the articles being made or the legal consequences of a decision made by the court. Meanwhile, justice lies in the existing values of life (Henry, 2018).

In fact, the process of sentencing, especially in narcotics abuse cases, occurs disparity. The judge's decision differs from one convict to another even though it is the same case with the same basis of punishment. Factors that cause disparity originate from the judge himself, both internal and external. These internal and external characteristics are sometimes difficult to separate, because they are integrated as a person's attribute which is called the "human equation" or "personality of the judge" in a broad sense which concerns outside influences such as family, finances, social status, life lived. in the past (Hasibuan et al., 2015).

These matters often play an important role in determining the type and severity of a crime, rather than the nature of the crime itself and the personality of the offender concerned. Factors in judges that cause disparity come from differences in judges' minds in giving legal considerations to narcotics abusers, differences in thoughts can have an impact on narcotics abusers who are more dangerous if an understanding of the concept of justice is set aside rather than legal certainty.

The judge's factor that influences criminal disparity comes from the judge himself, namely the difference in the judge's mind, according to Tri Andrisman the difference in the judge's mind is related to the independence of the judge, there are some judges who are very easily bribed and some judges remain firm in their idealism to avoid being pragmatic. According to Rizqi Trio Henry, the same opinion from a legal practitioner, differences in judges really determine the severity of a decision, sometimes you

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get friendly judges and sometimes you get stiff judges. These rigid judges are avoided by lawyers because usually the criminal sentence from these judges can be maximized. .

Decision No.134/Pid.Sus/2021/PN .Met the defendant on behalf of Febi Indrawan was sentenced to imprisonment for 3 years, the judge's decision must have had stages of thinking before the judge decided on the defendant Febi Indrawan the judge must have thought through the process of thinking then created arguments after these arguments are formed then the judge writes them down in the judge's decision. The problem of disparity really exists because the judge's thinking process is different from other judges and makes several different cases with different judges' thoughts cause a criminal disparity. Verdict No. 134/Pid.Sus/2021/PN.Met is proof that the judge's decision to convict the defendant for 3 (three) years even though the defendant is still young is justice, the justice that is meant is justice for the wider community, not for the convict himself.

B. Aspects of Justice Against Narcotics Abusers

Satjipto Raharjo suggested that the judges could improve their decision if they did not want to be stuck with legal routines such as a "conveyor belt" or like a vehicle tire, always rotating according to the paths and paths that had been provided. Even though the law gives judges the freedom to decide, it does not have to be in accordance with the articles in the law but in accordance with substantive justice, namely justice that is not procedural. The awareness of legal scholars in Indonesia to correct or improve the national legal system, from a legal system based on retaliation, punishment or punishment (read positive law), towards a progressive legal system based on restorative justice, began to be seen from the emergence of good policies from the Supreme Court to the authorities. Indonesian National Police and the National Narcotics Agency (BNN). The aim, apart from creating legal certainty, is also the effort to realize substantive justice, namely to give criminal sanctions and large fines to people who should be, not to people who because of their "weakness", or are unable to present a defense.

Substantive justice is interpreted as justice given in accordance with substantive legal rules, regardless of procedural errors that do not affect the plaintiff's substantive rights. This means that what is formally procedurally correct could be materially blamed and the substance violates justice. Likewise, what is formally wrong can be justified if materially and substantively it does not mean that judges must always ignore the provisions of the law. Rather, substantive justice means that judges can ignore laws that do not provide a sense of justice, but are still guided by formal-procedural laws that have provided a sense of justice while guaranteeing legal certainty. This means that judges are required to have the courage to make decisions that are different from the normative provisions of the law, so that substantial justice is always difficult to achieve through court judge decisions, because judges and court institutions will only provide formal justice.

The concept of justice in the disparity of decisions is often a problem for law enforcers, namely judges, Dicky Syarifudin emphasized which comes first between Legal Certainty or Justice, Justice should take precedence over Legal Certainty because Justice includes moral values in it, but embodies justice as shown in the balance sheet. justice will be very difficult to obtain, for this reason, judges in carrying out their duties can only strive for justice because of justice. which really only belongs to God, justice that the judge always strives for. In accordance with Hart's theory that the minimum requirement of criminal law is morals, for this reason judges in making a decision always take a casuistic approach in trying to solve concrete cases in the field of morality by applying general ethical principles.

The problem is after the judge has really included considerations that are based on philosophy, sociology and juridical, cases of narcotics abusers can be manipulated by means of bribery said by Tri Andrisman and Rizqi Trio Henry, if they really have to be rehabilitated let the process run naturally by considering that the perpetrators to start with victims of narcotics abuse or in cases of narcotics dealers who buy and sell narcotics because they are in poverty, not to trade law for the sake of justice, let justice be understood and felt by all law enforcers, not force all law enforcers to understand and feel justice.

Judges are ordinary people, of course the author believes that justice will never be achieved because the judge's job can only seek justice, on the one hand the convict who gets a rehabilitation sentence will feel happy but on the other hand the convict who gets the maximum sentence will feel that this is unfair, of course not there is justice in such an example.

Guidelines for sentencing in Law no. 1 of 2023 has projected this by prioritizing justice and in legal considerations that contain a human side in it. The author's statement about considering abusers, addicts and dealers as victims is a perspective from progressive law that progressive law pays great attention to the role of human behavior in law. This is diametrically opposed to the notion that law is only a matter of regulation. The role of humans is a consequence of the recognition that we should not adhere absolutely to the formal text of a rule.

Judges have broad freedom to determine the weight and lightness of a decision for that as a society must view that Decision No. 134/Pid.Sus/2021/PN.Met is an appropriate and proportionate decision However, it is this that can cause disparities, when judges perceive that the decisions made are fair, justice is created based on the judgment of the judges themselves, while convicts who abuse narcotics who compare decisions with other friends will feel that the decision is unfair. This is what causes disparity in decisions. The disparity in decisions affects the perspective and evaluation of society towards justice. It can be seen as a form of injustice that is felt by some people. However, Andrew Ashworth said that the disparity in decisions cannot be separated from the judge's discretion in imposing sentences in a criminal case.

III. CONCLUSIONS

Factors that influence the disparity are legal factors and judge factors. 35 of 2009 does not explicitly stipulate the rules for the minimum limit on the threat of criminal penalties for perpetrators of criminal acts, then the factor of the judge is due to the judge having very broad freedom to determine the desired criminal sentence, so that the absence of this minimum limit gives flexibility for judges to impose criminal sentences, this often results in different punishments or often called disparities. It is hoped that the Supreme Court will be able to formulate a sentencing guideline for narcotics abusers for themselves, the sentencing guideline in question is a guideline which contains principles that need to be considered by judges. judges in making legal considerations must be able to make decisions explicit through a casuistic approach so that the judge's decision can be understood by the community and there will be no more disparities in decisions but proportionality. The idea of proportional punishment developed into the idea of creating a sentencing guideline that is able to reduce the subjectivity of judges in deciding cases. The judge is the party that most determines the sense of justice for society.

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