

## **The Criminal Disparity in Special Criminal Cases on Narcotics at Karanganyar State Court**

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**Abstract.** *The disparity of criminal decisions has the meaning of unequal punishment of convicts in the same case or cases with almost the same level of crime, whether committed jointly or not without justifiable basis. This study aims to find out and analyze the basis for consideration of judges in imposing criminal decisions on perpetrators of narcotics crimes at the Karanganyar District Attorney's Office; Knowing the factors that influence the judge's decision against the perpetrators of criminal acts, especially those who violate Article 112 paragraph 1 of 35 of 2009 concerning narcotics. The data used is secondary data in the form of a judge's decision. The analytical approach used is the case approach and the concept of criminal law. The results of this study indicate that in deciding cases judges use evidence as stated in the Criminal Procedure Code. The factors that influence the judge's decision include three things, namely: the legal factor itself, the perpetrator factor and the judge concerned.*

*Keywords: Decision; Disparity; Narcotics.*

### **1. Introduction**

The definition of narcotics according to Article 1 number 1 of Act No. 35 of 2009 concerning Narcotics is: Narcotics are substances or drugs derived from plants or not plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduced to relieve pain, and can cause dependence, which are differentiated into groups as attached to this Law.<sup>1</sup> Furthermore, in this study Act No. 35 of 2009 concerning Narcotics is referred to as the Narcotics Law).

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<sup>1</sup>Article 1 point 1 Law number 35 of 2009 concerning Narcotics

Currently narcotics abuse covers all levels of society whether poor, rich, old, young, and even children. Narcotics abuse is inseparable from the positive legal system that applies in Indonesia. The positive law system that applies in Indonesia is experiencing very rapid development, this can be seen in the effectiveness of the implementation of criminal sanctions.<sup>2</sup>

Criminal provisions (prison, fines, substitution, confinement, closure, or additional penalties and others.<sup>3</sup>Based on the Narcotics Law, it brought many significant changes compared to the criminal provisions in the previous legislation.<sup>4</sup>One of these changes is to open up space for weighting criminal penalties against perpetrators of narcotics abuse. Narcotics crime is one of the special crimes because it does not use the Criminal Code (KUHP) as the basis for its regulation but is regulated in a special law outside the Criminal Code (KUHP), namely the Narcotics Law.

All abuse of narcotics according to what has been regulated in UThe Narcotics Law is a narcotics crime. The term crime comes from a term known in Dutch criminal law, namely strafbaar feit.<sup>5</sup> Punishment is of course a central focus to be able to provide a deterrent effect and be useful for perpetrators of narcotics abusers. Products resulting from punishment can hardly be found in judges' decisions that do not cause disparity in sentences (differences in the number of sentences), both imprisonment, fines, alternative sentences , imprisonment, imprisonment, or additional punishment.

"Differences in determining punishments in practice are the result of the fact that the actions before criminal judges show differences and that among the judges themselves there is a difference of opinion regarding the assessment of data in the same or comparable cases.<sup>6</sup>

Based on this description, the Karanganyar District Court Decision Number 32/Pid.Sus/2022/PN Krg ruled that the defendant Habib Listyanto Alias Habib Bin Sulardi was found guilty of committing a narcotics crime and violating Article 196 of the Act No. 36 of 2009 concerning health and Article 62 of the Act No. 5 of 1997 concerning Psychotropics and Act No. 8 of 1981 concerning Procedure Law and other relevant laws and regulations; for 2 (two) years and a fine of IDR

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<sup>2</sup>Hamidah Abdurrachman, et al, 2012, Disparity in Judge Decisions in Drug Cases, *Pandecta Journal*, Volume 7. Number 2. July, p. 216

<sup>3</sup>Mohammad Ekaputra and Abul Khair, 2010, *The System in the Criminal Code and Its Arrangements According to the New Criminal Code Concept*, USU Press, Medan, p 20-25.

<sup>4</sup>*Ibid.*, p. 45

<sup>5</sup>Adami Chazawi, *Criminal Law Study I; Criminal System, Criminal Acts, Criminal Theories and Limits of Applicability of Criminal Law*, Raja Grafindo Persada, 2002, p. 67

<sup>6</sup>Soerjono Soekanto and Sri Mamudji, 2003, *Normative Legal Research; A Brief Overview*, Seventh Note, Raja Grafindo Persada, Jakarta, p. 13

6,000,000.- (six million rupiah) provided that if the fine is not paid, it is replaced by imprisonment for 2 (two) months; The defendant did not make any legal appeals.<sup>7</sup>

Another case that occurred against the defendant Sukasno Als Ambon Bin Reso Pawiro was proven legally and convincingly guilty of committing the crime of "without rights and against the law of being an intermediary in the sale and purchase of Narcotics Group 1"; Sentenced punishment against the Defendant therefore with imprisonment for 5 (five) years each and a fine of IDR 1,000,000,000.- (one billion rupiah) provided that if the fine is not paid it is replaced by imprisonment for 2 (two) months;

There must be criminal disparity in every judge's decision, but the problem is when the criminal disparity occurs without clear arguments and is acceptable juridically, philosophically and sociologically, because these three are the basis for the effectiveness of a law in society. . The judge's considerations in handling narcotics cases must take into account the value of social justice, not only considering legal certainty. Judges have the duty to receive, examine, and try and decide cases, meaning settling criminal disputes.

## 2. Research Methods

The approach method uses normative juridical, focusing on how to examine literature which is secondary data and is also called library law research. Soerjono Soekanto's opinion is normative legal research which is carried out by examining literature or secondary data.<sup>8</sup>

The specifications used are analytical descriptive in nature, provide systematic, logical explanations, analyze them in order to review literature, legislation, applicable legal norms and analyze them to draw conclusions.<sup>9</sup>The data source used by secondary data consists of primary legal materials in the form of legislation relating to legal research conducted.

The data collection method with the main activities carried out is library research, reviewing, studying and processing literature, laws and regulations, judge's decisions and articles or writings related to the issues to be studied. The method of data analysis was carried out qualitatively with data analysis methods by grouping and selecting data obtained from library research (library research).

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<sup>7</sup>Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p. 119

<sup>8</sup>Soerjono Soekanto and Sri Mamudji, 2003, Normative Legal Research; A Brief Overview, Seventh Edition, Raja Grafindo Persada, Jakarta, p.13

<sup>9</sup> Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p.118

### 3. Results and Discussion

#### 3.1. Factors Causing Karanganyar District Court Judges Generally pass Decisions on Narcotics Abusers

The definition of a decision is a judge's statement as outlined in written form and pronounced by the judge in a hearing open to the public, as a matter or dispute between parties who have mutual interests.

The factors that cause judges at the Karanganyar District Court who generally sentence narcotics abusers to prison are closely related to the factors that influence law enforcement (the Narcotics Law) (Hasan & Firmansyah, 2020) where in increasing government law enforcement through political will (Romdoni, WN, & Nurdiansyah, 2022) to eradicate Narcotics abuse. In terms of legal substance, firstly, it relates to the formulation of Article 127 paragraph (1) letter a of the Narcotics Law which states that, "every person who abuses Narcotics Category I for himself shall be punished with a maximum imprisonment of only 4 (four) years". The abuser referred to in the Narcotics Law is stated in Article 1 point 15 that, "Abuse is a person who uses Narcotics without rights or against the law". The formulation of this article certainly applies to all decisions that violate Article 127 paragraph (1) letter a of the Narcotics Law, because basically the perpetrators described in each decision are preceded by the element of "owning" to be used for oneself. On the other hand, it is stated in Article 1 number 13 of the Narcotics Law, that "Narcotics addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically". The Narcotics Law does not clearly explain the definition of addicts who have physical or psychological dependence.

Article 3 Paragraph (2) of the Judicial Law regulates the freedom of judges in determining the sentence, where the judge's decision cannot be interfered with by any party and is free from intervention by any institution. It is this freedom of justice, it is hoped that justice can be created in accordance with the spirit of humanity and social justice in society.<sup>10</sup> The disparity in sentencing is closely related to the freedom of judges in deciding cases against several defendants who committed the same crime.<sup>11</sup> With regard to the freedom of judges in imposing sentences against several defendants who have committed the same crime, Sudarto said that the freedom of judges in determining sentences should not be in such a way as to allow for striking dissimilarities to occur, and will bring about a feeling of not being comfortable (onbehagelijk) for society, the

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<sup>10</sup>Law Number 48 of 2009 Concerning Judicial Powers Article 3 Paragraph (2)

<sup>11</sup>Harkisnowo, Harkistuti, 2003, Reconstruction of the Concept of Punishment, Oration at the Inauguration Ceremony of Permanent Professor in Criminal Law, Faculty of Law, University of Indonesia, University of Indonesia, p. 77

guidelines providing punishment in the Criminal Code (KUHP) is very necessary, because this will reduce this inequality even though it cannot completely eliminate it.<sup>12</sup> Disparity of sentencing is the application of unequal penalties to the same offenses or to crimes of comparable seriousness without a clear justification. Furthermore, without referring to "legal category", criminal disparities can occur in the punishment of those who commit an offense together. According to Harkristuti Harkrisnowo, criminal disparities can occur in several categories, namely (a) Disparities between the same crimes, (b) Disparities between crimes that have the same level of seriousness, (c) Disparities in crimes handed down by a panel of judges, (d) Disparity between sentences handed down by different panels of judges for the same crime.

Criminal disparity itself occurs not only due to one factor, but there are several factors that can cause it.<sup>13</sup> These factors include the following: (1) Legal System; The legal system adopted by Indonesia is the Continental European System (Civil Law System), where in this legal system, statutory regulations are the highest regulations which are the main source of law.<sup>14</sup> (2) Legislation; laws and regulations can be one of the reasons for the occurrence of criminal disparities, bearing in mind that laws and regulations in Indonesia contain various criminal threats. (3) There is no common guide that can be used by judges in making decisions; Judges, in deciding a case, usually only look at the evidence shown during the verification process and with the conviction of the judge himself (4) The Judge's personality; The personal nature of the judge who decides a case, as well as the judge's understanding of a case, can be one of several causes of criminal disparity.<sup>15</sup>

Criminal disparity in Indonesia today is a major problem in court decisions. The high criminal disparity between decisions in similar cases proves the reaction of the public who say that many court decisions are seen as inconsistent. Meanwhile, the low quality of the decision can be seen from the lack of clarity on the basis of legal considerations in the decision.

### **3.2. Factors Causing Disparity in Judge's Decisions Against Narcotics Offenders According to Act No. 48 of 2009 concerning Judicial Power and Act No. 35 of 2009 concerning Narcotics**

Factors Causing Criminal Disparities in Indonesia, as follows: (1) Legal Factors; The source of law is basically not only in statutory provisions. Because statutory provisions are only a source of written law, while unwritten law is law that

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<sup>12</sup>Muladi and Barda Nawawi Arief, 2005, *Criminal Theories and Policy*. Bandung: Alumni, p. 23

<sup>13</sup>R. Abdol Djamali, 1990, *Introduction to Indonesian Law*, Rajawali Press, Jakarta, p. 75

<sup>14</sup>Bisma Siregar et al, 2007, *Law and Children's Rights*, Rajawali, Jakarta, p. 55

<sup>15</sup>Soeroso, 2011, *Introduction to Law*, Sinar Graphic, Jakarta, p.191

originates from customs. Internal Factors (On Judges); Judges are basically just a status attached to human beings, where as it is known that no human being is the same. This is due to the different social background, education, religion, experience, temperament and social behavior of each judge. this is often more dominant in influencing and playing an important role in determining the type and severity of punishment,

### **3.3. The Judge's Consideration Determines the Disparity in the Judge's Decision in Decision Number32/PID.SUS/2022/PN.KRG and NO.140/PID.SUS/2022/PN.KRG**

#### **Judge's Decision No32/PID.SUS/2022/PN.KRG**

The judge's decision in this case is:<sup>16</sup>1) Declare the Defendant Habib Listyanto Alia Habib Bin Sulardi guilty of committing the crime of "deliberately distributing pharmaceutical preparations without having expertise and authority in the pharmaceutical sector and without the right to possess psychotropics" 2) Sentence the Defendant as a prison sentence for 2 (two ) years and a fine of IDR 6,000,000 (six million rupiah) with the provision that if the fine is not paid it is replaced by imprisonment for (2) two months; 3) Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed; 4) Stipulating that the Defendant remains in detention; 5) Specify evidence in the form of: Cash in the amount of IDR 520,000, - (five hundred thousand rupiah) confiscated for the State; 3820 (three thousand eight hundred and twenty) silver colored pills with the words Trihexyphenidyl tablets 2 mg stored in a bird cage made of wood, 4 (four) silver colored pills with the words Riklona 2 CLONAZEPAM, 1 (one) brand cell phone Infinix X 689 purple color with simcard number 085878799\*\*\* Confiscated for destruction. In this case the defendant did not make an appeal

The judge's considerations in deciding the case are as follows: that because all the elements of Article 112 Paragraph (1) of Law R.epublic of Indonesia Number 35 of 2009 concerning Narcotics has been fulfilled, the Defendant must be declared legally and convincingly proven to have committed a crime as stated in the Indictment. Taking into account, Article 112 Paragraph (1) Act No. 35 of 2009 concerning Narcotics and Act No. 8 of 1981 concerning Criminal Procedure Code and other relevant laws and regulations.

#### **Judge's Decision NoNO.140/PID.SUS/2022/PN.KRG**

The judges' decisions in this case were: 1) declared the defendant Sukasno Als Ambon Bin Reso Pawiro proven legally and convincingly guilty of committing the

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<sup>16</sup>Decision Number 32/Pid.Sus/2022/PN KRG

crime "without rights and against the law being an intermediary in the sale and purchase of Narcotics Group 1"; 2) impose a sentence on the Defendant because of this with imprisonment for 5 (five) years each and a fine of IDR 1,000,000,000.- (one billion rupiah) provided that if the fine is not paid it is replaced by imprisonment for 2 (two) months; 3) Determine that the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed; 4) Stipulates that the accused remains in custody 5) Stipulates evidence in the form of: 1 (one) black Infinix Hot 8 HP brand with Simcard number 082137864 \*\*\* Confiscated to be destroyed; 6) Burden the Defendant to pay court fees in the amount of IDR 2.500,- (two thousand five hundred rupiah)<sup>17</sup>

The judge's considerations in deciding the case are as follows: that because all the elements of Article 112 Paragraph (1) of Law R.epublic of Indonesia Number 35 of 2009 concerning Narcotics has been fulfilled, the Defendant must be declared legally and convincingly proven to have committed a crime as stated in the Indictment. Taking into account, Article 112 Paragraph (1) Act No. 35 of 2009 concerning Narcotics and Act No. 8 of 1981 concerning Criminal Procedure Code and other relevant laws and regulations.

From the description above, it can be concluded that the judge's considerations in deciding the case are as follows; 1) Act No. 25 that because all the elements of Article 112 Paragraph (1) of the Act No. 35 of 2009 concerning Narcotics have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed an criminal act as stated in the Indictment. Taking into account Article 112 Paragraph (1) of the Act No. 35 of 2009 concerning Narcotics and Act No. 8 of 1981 concerning Criminal Procedure Code and other relevant laws and regulations.

Based on the analysis of the case, the decisions of the Karanganyar District Court which dropped the defendant as a narcotics addict and abuser with a prison sentence from the perspective of law enforcement cannot be separated from several factors. First, it does not rule out the possibility that in the handling process there will be buying and selling of articles outside the court, both at the level of investigation, prosecution and at the level of a decision. It is possible that the sale and purchase of this article can be carried out by bribing unscrupulous police officials, and it does not rule out the possibility of involving unscrupulous officials of the Attorney General's Office and officials of court judges to receive "illegal money" from the perpetrators so that the alleged articles can be changed, for example from the alleged violation of Article 114. can be changed to Article 112 or Article 127, or maybe what should be subject to Article 112 becomes Article 127 because in general every decision is not accompanied by an assessment beforehand. Second, the factor that can contribute to the disparity

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<sup>17</sup>Decision Number 140/Pid.Sus/2022/PN KRG

of decisions in narcotics crimes is the freedom of judges (Toliango, 2016), because the power of independent judges is guaranteed by law.-Laws, namely Article 24 paragraph (1) of the 1945 Constitution and Article 1 point 1 of Act No. 48 of 2009 concerning Judicial Power. The existence of this freedom of judges can be applied to the provisions of Article 103 paragraph (1) of the Narcotics Law, because the word "can" contained in the article can be interpreted as an action that may be handed down by a judge in the form of rehabilitation or imprisonment for addicts or narcotics abusers. Third, the factors that cause narcotics abusers to be sentenced to prison (not to be rehabilitated), because to carry out rehabilitation for narcotics abusers requires high costs so that large funds are needed for it.

#### **4. Conclusion**

The implementation of decisions on narcotics crimes arises because of the factors that cause disparities in judges' decisions against narcotics offenders: factors of differences in sentencing philosophies, factors of absence of sentencing guidelines, factors of independent judicial authority, factors of legal events, and factors of judge discretion. Matters considered by judges in sentencing criminal acts of narcotics are the nature of the independence of judges in carrying out their duties and authorities, being impartial, being honest or fair, not being discriminatory, but assigning and placing the parties involved litigation under equal conditions before the law (Equality before the law).

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