



## Disparity in Judges' Decisions in Narcotics Crime Cases

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### Abstract

The purpose of this study is to analyze the disparity in judges' decisions in narcotics crime cases at the Praya District Court and to analyze the disparity in narcotics crime cases according to the theory of justice. This research is a normative legal study using a statutory approach, a conceptual approach, and a case approach. Legal materials were analyzed using literature and the internet. The results of the study indicate that disparity in judgments is influenced by several factors, including differences in legal interpretation by judges, the absence of standard sentencing guidelines, and subjectivity in considering aggravating and mitigating circumstances. Aggravating factors include the defendant's prior criminal record. Mitigating factors include the defendant's cooperative attitude during the trial and a promise not to repeat the offense in the future. Disparity in narcotics-related criminal cases, according to the theory of justice, is viewed from the enforcement of the law to achieve the desired legal justice. Different sentences for similar cases can be considered unfair, as they disregard the principle of "proportionality" between the offense and the punishment. From the perspective of justice theory, this disparity contradicts the principles of distributive and retributive justice because it results in unequal treatment of offenders with similar criminal acts.

**Keywords:** Criminal; Disparity in Verdicts; Narcotic.

Submitted: 2025-07-25

Revised: 2025-08-18

Accepted: 2025-08-29

Published: 2025-08-31

How To Cite: Sri Raehan, Yulias Erwin. "Disparity in Judges' Decisions in Narcotics Crime Cases." BACARITA Law Journal 6 no. 1 (2025): 133-144. <https://doi.org/10.30598/bacarita.v6i1.20984>

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## INTRODUCTION

Currently, narcotics abuse covers all levels of society, both poor, rich, old, young, and even children. Narcotics abuse from year to year has increased which ultimately harms the nation's successor cadres. Narcotics abuse is inseparable from the positive legal system that applies in Indonesia. The positive legal system that applies in Indonesia has experienced very rapid development, this can be seen in the effective implementation of criminal sanctions.<sup>1</sup> As the country with the highest rate of drug use in Southeast Asia, Indonesia ranks third. A total of 1,444 people died due to drug abuse in 2021, then in 2022, the National Narcotics Agency reported 3,433 cases of drug abuse. As drug abuse has spread to all walks of life in Indonesia, the term 'war on drugs' has become very relevant. In response to the situation, President Joko Widodo instructed decisive action through the call for a 'War on Drugs', as Indonesia has become a prime target in the illegal circulation and abuse of narcotics.<sup>2</sup>

According to the 2022 Indonesia Drugs Report released by the Data and Information Research Center of the National Narcotics Agency, the prevalence rate of narcotics abuse in 2019 reached 1.80 percent, and increased to around 1.95 percent in 2021, indicating an increase of 0.15 percent. In the age group of 15 to 64 years, it was recorded that around 4.8

<sup>1</sup> Hamidah Abdurrachman and others, 'Disparitas Putusan Hakim Dalam Kasus Narkoba', *Pandecta* 7, no. 2 (2012): 217-228

<sup>2</sup> Deputi Bidang Pencegahan, *Awas! Narkoba Masuk Desa*, Badan Narkotika Nasional, 2018. p. 4

million people, both in rural and urban areas, had used narcotics throughout 2022 to 2023. This number is an increase compared to previous data which recorded around 4.5 million people as narcotics users.<sup>3</sup>

Despite various efforts have been made, cases of drug abuse and trafficking in Indonesia continue to show an increasing trend and this shows that there are major challenges in drug eradication. West Nusa Tenggara, as part of the province in Indonesia, also faces serious challenges in handling drug abuse cases, both among the general public, students, and the authorities. Local governments, police, and various other institutions continue to strive to overcome drug trafficking and abuse in West Nusa Tenggara. As conveyed by the Chairman of the event Committee, Nur Rachmat, who is also the Coordinator for Community Prevention and Empowerment of the National Narcotics Agency of West Nusa Tenggara Province at the Anti-Drug Declaration of Coastal and Border Communities as a series of commemorations of International Anti-Narcotics Day in 2024, the prevalence of drug abuse in West Nusa Tenggara is still at 1.73 percent of the population. The most drug users are in the age range of 15-21 years, the majority of whom are still students and university students.

This figure shows how serious the drug problem is in West Nusa Tenggara. The West Nusa Tenggara Regional Police revealed 116 cases of narcotics trafficking and abuse from January to October 2024.<sup>4</sup> The above data illustrates that narcotics cases in West Nusa Tenggara are still a serious challenge for law enforcement officials and the community," therefore, the drug eradication process requires cooperation between various institutions, such as the National Narcotics Agency, the police, and the prosecutor's office. Lack of coordination can hinder the process of resolving cases in court, one of which is incomplete evidence or an unintegrated investigation that can cause defendants to escape from legal bondage.

The role of the District Court has a very strategic position in efforts to eradicate narcotics, as an integral part of the law enforcement system against narcotics crimes in Indonesia. The District Court plays a central role in examining and adjudicating cases related to the abuse, trafficking, and production of narcotics. The District Court plays an important role in ensuring that drug eradication runs in accordance with the values of justice based on positive legal norms, one of which is the Praya District Court which continues to play an active role in law enforcement related to narcotics cases, and establishes coordination with other law enforcement officials in order to overcome narcotics trafficking in the Central Lombok Regency area.

Central Lombok Regency is one of the districts in West Nusa Tenggara Province. In addition to having a rapidly growing tourism sector, it brings benefits to the region, but it also increases illegal activities such as narcotics trafficking because it is considered a profitable market. Central Lombok Regency, which is known as a leading tourist destination with the Mandalika area and as the host of the International MotoGP, does face vulnerability to drug trafficking. With the presence of thousands to hundreds of thousands of tourists every year, Central Lombok is an attractive area for narcotics networks. Tourists are often the target market for narcotics consumption in recreational activities, and of course have an impact on the vulnerability of local communities to drug abuse. According to the results of

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<sup>3</sup> Badan Narkotika Nasional, *Indonesia Drugs 2022 Report* (Jakarta: BNN, 2022), p. 37.

<sup>4</sup> Polda NTB, 'Polda NTB Ungkap 116 Kasus Narkotika Sepanjang Tahun 2024, 16 Kg Sabu Dan 31 Kg Ganja Disita', *Tribatanews*, 2024 <<https://tribatanews.ntb.polri.go.id/polda-ntb-ungkap-116-kasus-narkotika-sepanjang-tahun-2024-16-kg-sabu-dan-31-kg-ganja-disita/>>.

the study, the number of narcotics cases in 2022 and has been decided by the Praya District Court is 50 cases, in 2023 there are 52 cases and in 2024 there are 89 cases.

Drug-related crimes are not considered like other common crimes, but have transformed into crimes with significant impacts,<sup>5</sup> On this basis, the general criminal law is considered not effective enough in reducing the crime rate related to illicit drug trafficking. Therefore, the application of special criminal law is needed as a more effective instrument to handle and control these problems comprehensively and comprehensively.<sup>6</sup> The eradication of deviant behavior in drug use and the spread of drugs is a complicated matter in its resolution and requires global preventive measures. Regarding multidisciplinary and sustainable cooperation, it requires active and involved community participation. Narcotics crimes are a special criminal offense because they do not use the Criminal Code as the basis for regulation but those that have been regulated in specific laws outside the Criminal Code. All narcotics abuse in accordance with what has also been regulated in Law number 35 of 2009 is a narcotics crime.<sup>7</sup>

For example, it can be noted that the punishment for narcotics crimes is mentioned in Law Number 35 of 2009 Article 112 Paragraph (1) that: "every person who without rights or against the law possesses, stores, controls, or provides class I narcotics that are not plants, shall be sentenced to imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 800,000,000, 00 (eight hundred million rupiah) and a maximum of IDR.8,000,000,000.00 (eight billion rupiah)".

Based on the sanction, the judge who determines or decides the defendant can be sentenced to 4 (four) to 12 (twelve) years in prison and fined 800 million to 8 billion rupiah. It cannot be determined how much the judge will impose the sentence and the amount of the fine. Another example is about drug addicts. If the person involved in this case is a drug addict must be rehabilitated, it depends on the judge's decision, depending on the form of the crime committed is proven. This means that the court will go through an examination process before a court decision is made to decide whether the person will be rehabilitated or not.<sup>8</sup>

Disparities have consequences, including for convicts, namely the absence of a sense of justice for the convict and difficulty for the public to understand the crime.<sup>9</sup> Based on the opinions of Muladi and Barda Nawawi Arif quoted by Adhi Wibowo, it is stated that criminal disparities can have serious impacts, especially in the context of the correctional system, when a convict compares the legal verdict he receives with other convicts who are subject to the same article. The comparison can give rise to feelings of injustice and the assumption that he is a victim of the judge's inconsistency in making judgments (*judicial caprice*).<sup>10</sup> Such circumstances will be an obstacle to the implementation of the crime that has been imposed and the intention in the penalty. The causality of criminal disparity has an impact on the loss of trust, one of which is that the convict no longer believes in the law and

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<sup>5</sup> Ar. Sujono Dan Bony Daniel, *Komentar Dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika* (Jakarta: Sinat Grafika, 2013), p.15

<sup>6</sup> Eddy O.S. Hiarij, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2015), p. 25

<sup>7</sup> Fikarlia And Jalaluddin, "Disparitas Putusan Terhadap Tindak Pidana Narkotika Ditinjau Dari Kepastian Hukum", *Pagaruyuang Law Journal* 7, no. 1 (2023): 122-35

<sup>8</sup> Frengky Manurung and others, 'Disparitas Putusan Hakim Terhadap Tindak Pidana Narkotika Di Wilayah Hukum Pengadilan Negeri Rantauprapat (Studi Kasus Putusan NO. 159/PID.SUS/2019/PN.RAP dan Putusan NO. 626/PID.SUS/2020/PN.RAP)', *Law Jurnal* 2, no. 1 (2020): 62-79

<sup>9</sup> Encep Henry and Adhi Wibowo, 'Disparitas Putusan Hakim Dalam Menjatuhkan Pidana Pada Tindak Pidana Narkotika', *UNES Journal of Swara Justisia* 2, no. 1 (2018): 22-23.

<sup>10</sup> Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumi, 2005), p. 78

the institutions and apparatus that enforce the law, that in a specific rule in terms of projective, criminal disparity allows to foster an attitude that is contrary to rehabilitation and also resocialization in the convict environment. Then in this circumstance it can be detrimental in an effort to increase legal confidence by the convict.<sup>11</sup>

If this condition occurs, it can be an indicator of failure in the criminal justice system, which should ensure the creation of equal justice principles in the state of law. So that the sustainability of inequality in criminalization that has been described earlier can have an impact on the level of public trust. This condition risks reducing the integrity and credibility of the law enforcement system, especially in handling cases of narcotics crimes.

Imposing a proportionate sentence means giving a punishment that is balanced with the level of seriousness of the crime committed. This principle requires that there be a benchmark to determine whether a crime is in accordance with its actions or not. Values, norms, and community culture are important factors in determining the type of sanctions that are considered appropriate according to the context of the times. Research conducted by Harkristuti Harkrisnowo shows that the principle of proportionality has been known since the time of ancient Indonesian law.<sup>12</sup> The determination of the severity of the punishment should ideally be based on an objective assessment, not just a subjective assumption. This approach is in line with the principle of transparency in law enforcement. The application of the principle of openness is very important, because the criminal measurement process (*straftoemeting*) carried out in an accountable manner will increase the legitimacy of the verdict. Thus, the judge is expected to be able to provide clear legal considerations and be accountable for the crime imposed on the defendant. Such a criminal structure serves as the main basis for building a law enforcement process that upholds transparency, accountability, and integrity.

The study of criminal inequality and policies in handling cases of drug abuse is very important to be studied more deeply, both by law enforcement officials and legal academics. This study aims to assess the extent to which the application of narcotics law in Indonesia is carried out consistently, as well as to identify various legal issues that often arise in the judicial process of narcotics cases. The findings of this study are expected to be a reference in the formulation of data-based policies, in order to support the implementation of fair legal services and ensure the protection of rights for justice seekers (*justiciabellen*).

## METHODS OF THE RESEARCH

This research is a normative legal research. Normative law is a scientific process that aims to find legal rules, legal principles, and relevant legal doctrines in order to answer the legal problems that are being faced.<sup>13</sup> The approach used in this study is to use a legislative approach (Law Number 35 of 2009 concerning Narcotics, the Supreme Court Circular, and the Attorney General's Guidelines related to policies for handling narcotics abuse crimes), conceptual *approach*, and Case *Approach*). The method of collecting research legal materials with literature and internet techniques. Legal materials that have been collected by accessing official government websites and regulatory archives that are published publicly and researchers carry out the process of deforming, grouping and compiling based on the

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<sup>11</sup> Widiyani Ratna Furi and Budi Setiyanto, "Disparitas Pidana Dalam Tindak Pidana Pencurian Denan Kekerasan Di Pengadilan Negeri Sleman", *Recidive : Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 4, no. 1 (2017): 23–42

<sup>12</sup> Harkrisnowo Harkristuti, *Prinsip-Prinsip Dasar Hukum Pidana: Konsep Dan Implementasi* (Jakarta: Fakultas Hukum UI, 2013), p. 12

<sup>13</sup> Peter Mahmud Marjuki et.al, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2015), p. 34.

type of legal material which is ultimately regulated based on the rules of writing scientific papers.

## RESULTS AND DISCUSSION

### A. Disparity in Judges' Decisions in Narcotics Crime Cases at the Praya District Court

Criminal disparity is the difference in sentencing the same offense or a crime with a comparable level of harm, but without a clear reason or basis in a judge's decision.<sup>14</sup> Criminal disparity can be interpreted as the imposition of different sentences on convicts in the same case or cases of almost the same level of crime, whether it is committed jointly or alone without a justifiable basis. The criminal disparity that occurs has deep consequences, especially for the convict, namely the loss of the convict's sense of justice. Disparities can arise due to unclear laws and regulations, in addition to the factors of the defendant and the judge. That the existence of a minimum criminal threat can minimize the disparity in penalties, but this can also be ignored by judges choosing the basis of punishment on other regulations that do not have a minimum criminal threat. Andrew Ashworth in *Sentencing and Criminal Justice* states that the disparity in verdicts cannot be separated from the discretion of judges in imposing criminal laws on a criminal case. Independent power is inherent in judges in the process of administering justice and law enforcement practices. So that in the implementation and enforcement efforts, a judge becomes the last bastion for justice seekers, but in reality, law enforcement in terms of certainty is more prominent.<sup>15</sup>

According to Muladi and Barda Nawawi, the cause of the disparity in punishment (judge's decision) starts from the law itself, in the criminal law that applies in Indonesia, judges have great freedom to choose the type of punishment that is considered appropriate, because the law provides alternative sanctions options.<sup>16</sup> Judges are authorized by laws and regulations to receive, examine and decide a criminal case. Therefore, a judge in handling a case must certainly be able to do justice and a judge in giving a verdict may be influenced by things that exist in him and his surroundings such as the influence of religious, cultural, educational, values, norms and so on, so that it can allow for a difference in perspective that will affect considerations in giving a verdict. The laws and regulations that regulate the authority of judges are Law Number 48 of 2009 concerning Judicial Power, for example in Article 3 paragraph (1) which explains that Judges in carrying out their duties and functions are obliged to maintain judicial independence, then in Article 5 paragraphs (1) to (3) which explain that Judges are obliged to understand legal values and a sense of justice, have integrity and good personality, and obey the Code of Ethics and Code of Conduct for Judges, and also in Article 39 paragraph (4) which explains that Judges can examine and decide cases freely.

Judges have the freedom to impose prison sentences on someone who commits an unlawful act. Such freedom is absolute and no party can intervene in making such a decision. It aims to ensure that court decisions are truly objective. The freedom of judges in imposing prison sentences must also be guided by maximum and minimum limits and must always be based on a sense of justice, both for the defendant and the victim and the wider community. In addition, court decisions by judges must be accountable to God Almighty.

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<sup>14</sup> Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Badung: Pusaka Almaida, 1982), p. 53.

<sup>15</sup> Muhamad Romdoni and Surastini Fitriasih, "Disparitas Pemidanaan Dalam Kasus Tindak Pidana Khusus Narkotika Di Pengadilan Negeri Tangerang", *Masalah-Masalah Hukum* 51, no. 3 (2022): 287-298

<sup>16</sup> *Ibid*

The judge's duty is to give a verdict in every case or conflict submitted to him, by determining the legal relationship, the legal value of the action, and the legal position of the parties involved, in order to be able to resolve conflicts fairly based on applicable law, the judge must be independent and free from the influence of any party, especially when making decisions.<sup>17</sup>

The judge's decision has a very important role because it has a value that is directly related to human rights. Basically, only a judge's decision that has permanent legal force can be enforced. The decision is considered to have permanent legal force if it is issued through an open and transparent trial, and no other legal remedies are submitted. In addition, the verdict must be stated in writing by fulfilling certain requirements as stipulated in Article 197 of the Criminal Procedure Code Paragraph (1), including letter f (including the legal basis of the penalty, factors that aggravate or mitigate the defendant), and letter h (statement of the defendant's guilt and fulfillment of the elements of the criminal act and the sentence imposed).

Disparity in punishment is the difference in punishment imposed by a judge in the same criminal act, especially in this case, namely the case of narcotics crimes, it can be said that the figure of the judge is the determinant of the occurrence of criminal disparity. Criminal disparity will be fatal if the convict compares the crime and feels that he is a victim of a misguided judiciary. According to Harkristuti Harkrisnowo, criminal disparities can appear in several forms<sup>18</sup>, namely: In the Praya District Court, there are 427 cases handled by the Praya District Court, of which there are 204 cases of narcotics cases or around 49% (percent) of all cases handled by the Praya District Court in 2024. The large number of narcotics cases handled by the Praya District Court gives rise to various different types of decisions or disparities in decisions, to see the disparity of the decisions, 2 decisions will be described as many as 2 decisions that are analyzed as material for analysis in this discussion, the decisions include the following: 1) Decision of the Praya District Court Number 57/Pid.Sus/2024/PN Praya: Decision on behalf of the defendant Doni Hartono als Doni Bin H. Ainuddin Alm, which was demanded by the public prosecutor with the demands: a) declaring the Defendant Doni Hartono Als Doni Bin H. Ainuddin (Alm)." has been legally and convincingly proven guilty of committing the criminal act of "committing a malicious attempt or agreement, which without right or against the law offers to sell, sell, buy, receive, become an intermediary in the sale and purchase, exchange or delivery of Class I Narcotics weighing more than 5 (five) grams."" Violating Article 114 paragraph (2) jo Article 132 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics as charged with the Public Prosecutor's First Alternative Charge"; b) "impose a criminal sentence on the defendant Doni Hartono Als Doni Bin H. Ainuddin in the form of imprisonment for 14 (fourteen) years reduced while the defendant is in custody and a fine of the same amount." IDR.1,500,000,000,- (one billion five hundred million rupiah) with "the provision that if the fine cannot be paid, it will be replaced with a prison sentence of 6 years." (six) months. "Considering that because all elements of Article 114 paragraph (2) Jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics have been fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed a criminal act as charged in the First Alternative Indictment." "So that the Judge

<sup>17</sup> Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Edisi ke-1 (Jakarta: Sinar Grafika, 2018), p. 2

<sup>18</sup> "Harkristuti Harkrisnowo, *Rekonstruksi Konsep Pemidanaan, Suatu Gugatan Terhadap Proses Legislasi dan Pemidanaan di Indonesia*, Pidato, pada Upacara Pengukuhan Guru Besar Tetap dalam Ilmu Hukum Pidana Fakultas Hukum Universitas Indonesia, Universitas Indonesia, Jakarta, 2003, p. 12."

decided with the following verdict": a) Declaring that the Defendant Doni Hartono als Doni Bin H. Ainuddin Alm has been legally and convincingly proven guilty of committing the crime of malicious conspiracy without rights and against the law to be an intermediary in the sale and purchase of class I narcotics not plants weighing more than 5 (five) grams, as the First Public Prosecutor indicted"; b) Imposing a criminal sentence on the Defendant Doni Hartono als Doni Bin H. Ainuddin Alm, therefore with a prison sentence of 9 years." (nine)"years and a fine of "IDR.1,500,000,000.00 (one billion five hundred million rupiah)," with the provision that if the fine is not paid, it will be replaced with a prison sentence of 4 years." (four) months; 2) Decision of the Praya District Court Number 58/Pid.Sus/2024/PN Praya. The verdict on behalf of the defendant Zaerozi Saputra Alias Oji Bin Zarkasi (Alm), which was prosecuted by the public prosecutor with the following demands: a) declaring that the defendant Zaerozi Saputra Alias Oji Bin Zarkasi (Alm) was legally and convincingly proven guilty of committing a criminal act of "committing a malicious attempt or agreement without rights or against the law offering to sell, sell, buy, receive, be an intermediary in buying and selling, exchange, or hand over Class I Narcotics in the form of non-plants weighing more than 5 (five) grams" as the Public Prosecutor's First Alternative Indictment, which is in violation of Article 114 paragraph (2) jo. Article 132 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics; b) impose a criminal sentence on the Defendant Zaerozi Saputra Alias Oji Bin Zarkasi (Alm) in the form of imprisonment for 16 (sixteen) years reduced while the Defendant is in custody and a fine of IDR.1,500,000,000.00 (one billion five hundred million rupiah) with the provision that if the fine cannot be paid, it will be replaced with imprisonment for 6 (six) months in prison;

Considering, that in addition to the Defendant because it has been legally and convincingly proven to have committed a criminal act as regulated and threatened in Article 114 paragraph (2) jo. Article 132 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, where the punishment is cumulative, namely in addition to imprisonment must also be given a fine, then the Defendant should be sentenced to a fine and if the fine is not paid, then as Article 148 of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics must be replaced with a prison sentence the amount of which will be determined in this Decision. So the Judge decided with the following verdict: a) declaring the Defendant Zaerozi Saputra Alias Oji Bin Zarkasi." (Alm "was legally and convincingly proven guilty of committing the crime of malicious conspiracy without rights and against the law to be an intermediary to sell in the purchase of Class I narcotics in the form of non-plants weighing more than 5." (five)" grams as in the Public Prosecutor's First Alternative Charge; b) impose a criminal sentence on the Defendant Zaerozi Saputra Alias Oji Bin Zarkasi "(Alm) therefore with a prison sentence of 10 (ten) years and a fine of IDR.1,500,000,000.00 (one billion five hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 4 (four) months;<sup>19</sup>

From the description of the verdict of the narcotics crime above, it can be seen that there are several differences in the imposition of criminal verdicts or disparities in verdicts from the same narcotics crime, namely: 1) Criminal Verdict in Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Criminal Crime Verdict in Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics In the 7 verdicts above, there is a disparity in criminal imposition,

<sup>19</sup> 'Data Perkara Pengadilan Negeri Praya Tahun 2024.'

starting from 10 years in prison to 12 years in prison. There are 4 (four) decisions that impose a prison sentence of 10 years, then 1 (one) decision that imposes a prison sentence of 9 (nine) years in prison, 1 (one) decision that imposes a prison sentence of 11 (eleven) years in prison, and 1 (one) decision that imposes a prison sentence of 12 (twelve) years in prison. 2) Criminal Crime Decision in Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Criminal Decisions in Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics in the 2 decisions above there is a disparity in criminal imposition, starting from 4 years in prison and 5 years and 6 months in prison. From the two decisions, there is a difference in the length of imprisonment. 3) Criminal Crime Decision in Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

The Criminal Crime Verdict in Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics was sentenced to 6 (six) years in prison. This decision is much lighter than some of the decisions imposed on the Criminal Decisions in Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics above. "The difference in the imposition of the verdict shows that there is a difference in consideration from the judge in considering the length of the prison sentence imposed by the judge on the defendant". This shows the freedom of judges in exploring living legal values and a sense of justice in society. In accordance with the mandate of Law Number 48 of 2009 concerning Judicial Power, it states that judges are obliged to explore, follow, and understand the legal values and sense of justice that lives in society". The judge is also obliged to consider the good and evil nature of the defendant. Moreover, one of the formulations of Article 51 of the National Criminal Code states that judges are obliged to consider the motive and purpose of a person committing a criminal act. This is important, because it has the potential to affect the perspective and assessment of people who are disappointed with the justice system which can be perceived as a form of injustice for the perpetrators".

After looking at the description of the verdicts and explanations above, it can be seen that these verdicts have a disparity in punishment and are cases of narcotics abuse. These verdicts are a disparity in the sentencing of the disparity category between the same criminal acts. This is because the ten verdicts both state that the defendant is legally and convincingly proven to have committed a criminal act as charged in Article 114 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, but the defendant was sentenced to different criminal sentences. Therefore, it can be seen that it is true that there is a disparity between the three decisions decided by the Judge at the Praya District Court.

Based on several of these decisions, the Panel of Judges of the Praya District Court stated that the defendant had been legally and convincingly proven guilty of committing a narcotics crime with the judge's consideration in imposing the verdict, namely: 1) Judicial Considerations: That in this case the Public Prosecutor charged alternatively, namely that the defendant's actions had violated Article 114 paragraph (2) Juncto Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. In this article, the defendant is threatened with imprisonment and this is the basis for the Judge to examine a case. 2) Facts at the Trial. The facts revealed in the trial can be seen from the evidence presented in the trial. According to Article 184 of the Criminal Procedure Code, the valid evidence is: a) Witness Statement; b) Expert Testimony; c) Letters; d) Defendant's Statement. 3) Sociological Considerations: In general, in these cases, there are things that can aggravate and mitigate criminal sanctions, namely: a) Incriminating circumstances: 1) The Defendant's actions can damage the nation's generation; 2) The defendant has been convicted in a narcotics case; 3)

The defendant committed a crime in his status as an inmate in a correctional institution; b) Extenuating circumstances: 1) The defendant behaved politely at the trial; 2) The defendant admitted his actions; 3) The defendant regretted his actions and promised not to repeat them; 4) The defendant has never been convicted.

From these several decisions, the basis for the Judge's consideration at the Praya District Court in imposing criminal sanctions on the defendant of narcotics abuse is looking at the juridical, philosophical, and sociological truth. Juridical correctness is related to whether the legal basis used is in accordance with the applicable provisions. Philosophical truth means that judges must consider aspects of justice, ensuring that decisions taken are made fairly. Meanwhile, sociological truth refers to the judge's consideration of the impact of the decision on society, whether the decision will have a bad impact or not. So judges must make fair and wise decisions by taking into account the impact of the law and its effects on society.

Based on various considerations, the judge in imposing criminal sanctions for defendants who abuse narcotics, the judge considers aggravating and mitigating factors. Aggravating matters include the record of defendants who have been convicted before, causing unrest in the community, and not supporting the government's program in eradicating narcotics. Meanwhile, mitigating factors can be in the form of the defendant's cooperative attitude during the trial, frankness about his actions, and a promise not to repeat his actions in the future.

## **B. Disparity in judges' decisions in narcotics crime cases according to justice theory in the Praya District Court**

The judge in the trial is in the position of a leader. This position gives the right to regulate the course of the trial and take action when there is disorder in the hearing, for the purpose of decision, the judge has the right and must collect information from all parties, especially witnesses and defendants including their legal counsel. The judge has absolute authority in examining and deciding a case, including in determining the type of sanctions to be imposed on the perpetrators of criminal acts in the case he handles, whether it is a criminal sanction or an action sanction during the decision based on clear legal considerations and grounds as stipulated in the provisions of the Law.<sup>20</sup>

Criminal disparities give rise to a particular problem in law enforcement in Indonesia. On the one hand, different penalties or criminal disparities are part of the judge's discretion in imposing sentences. However, on the other hand, different penalties or criminal disparities bring dissatisfaction for the convict and the convict and even the community in general. There is social jealousy and negative public views of the judiciary, which are then implemented with an attitude of indifference to law enforcement. The longer the public's trust in the judicial institution fades and this is very contrary to the rule of law thought adopted by the Republic of Indonesia, where the government to run the wheels of its government must be held based on the law with the support of the judiciary in the form of judicial institutions, aiming to enforce the law, in order to create justice and legal certainty in society.<sup>21</sup>

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<sup>20</sup> Elisabeth Adisty Novena and Hari Soeskandi, "Disparitas Putusan Tindak Pidana Penyalahgunaan Narkotika Oleh Anak Dalam Perspektif HAM", *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 3 (2022): 1185-1213 <<https://doi.org/10.53363/bureau.v2i3.115>>.

<sup>21</sup> Rinaldy Restayuda Baskara and others, 'Analisis Yuridis Disparitas Putusan Hakim Pada Pengadilan Negeri Jakarta Barat Terhadap Penyalahgunaan Narkotika', *Rio Law Jurnal* 5, no. 2 (2024): 691-708

Achieving a fair verdict in criminal law requires a long process through the stages of trial. The main purpose of this process is to find the material truth that is the basis for imposing criminal sanctions in order to create a sense of justice. A fair verdict can be achieved if it is handled by a judge who not only has in-depth legal knowledge, but is also based on good morals or a good and commendable soul. Article 50 of the Judicial Power Law, reads: (1) A court decision must not only contain the reason and basis for the decision, but also contain certain articles of the relevant laws and regulations or unwritten legal sources that are used as a basis for adjudication; (2) Each court decision shall be signed by the chairman and the judge who decides and the clerk who participates in the session.

The punishment of the perpetrator must be based on the degree of the offense committed, in accordance with the principle of offense. This principle is based on two main pillars, namely the principle of legality which refers to the rule of law in society, and the principle of error that comes from the humanitarian side.<sup>22</sup> The judge's decision is the culmination of the process of resolving the case in the criminal law system with the judge's decision, the parties to the case, especially the defendant, can obtain legal certainty about their status and can prepare to take other legal remedies. The judge in making the verdict based his decision on the threat listed in the criminal article charged. The assessment of the criminal sentence that should be imposed on the defendant depends on the degree of guilt of the defendant for the criminal act he committed, however, it is undeniable that in the judge's decision there is a difference in the criminal offense against the defendant.

Judges are State judicial officials who are authorized by law to adjudicate. Adjudication is defined as a series of actions by the judge to receive, examine and decide the case based on the principle of freeness, honesty and impartiality in the court session, in providing justice the judge must first examine the truth of the event submitted to him then give an assessment of the event and relate it to the applicable law.<sup>23</sup> Judges are indeed free to examine and adjudicate a case so that it cannot be intervened by anything, based on the principle of freedom of independence, judges will give birth to various forms of judges' decisions, especially in criminal cases in terms of criminal cases, which in this case are related to narcotics crime cases. Justice is the main issue in the law. Justice is also one of the goals of the law. Even in the general circle, justice is something that cannot be separated from the law. Judges have a duty to uphold justice. This is in accordance with the head of the decision which reads: "For Justice Based on the One Godhead". The judge's decision emphasizes more on the element of justice, it does not mean that legal certainty and benefits do not exist, the elements of legal certainty and benefits remain in the judge's decision.

The judge's decision in court must be in accordance with its true purpose, namely: first, the judge's decision must carry out an authoritative solution, meaning providing a way out of the legal problems faced by the parties (plaintiff and defendant); second, the judge's decision must contain efficiency, namely fast and simple, low cost, because delayed justice is an injustice; third, the judge's decision must be in accordance with the purpose of the law on which the court decision is based; fourth, the judge's decision must contain aspects of stability, namely social order and public peace; and fifth, the judge's decision must be fair, namely giving equal opportunities to the litigant. Equity essentially means putting something in its place and giving to whom on a principle that all people are equal before *the*

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<sup>22</sup> *Ibid.*

<sup>23</sup> A.A Ngr Rai Anjasmara Putra and others, "Disparitas Putusan Hakim Dalam Tindak Pidana Narkotika", *Jurnal Analogi Hukum* 2, no.2 (2020): 129-135

*law*. A more inclined emphasis on the principle of justice may mean having to consider the laws that live in society, which consist of unwritten legal customs and provisions. Judges in their legal reasons and considerations must be able to accommodate all provisions that live in society in the form of unwritten legal habits and provisions, while choosing the principle of justice as the basis for deciding the case at hand.

Justice is a dream that every law wants to achieve and is one of the three important foundations, namely, the value of justice (*gerechtigkeits*), legal certainty (*rechtssicherheit*) and usefulness (*zweckmassigkeit*). Basically, the philosophy of justice according to experts is oriented towards equality, and one of the most famous is *Equality before the law*, but it must be understood that the meaning of the word justice is not the same as the meaning of the word equality where the two words contain different meanings. Justice in Aristotle's opinion contains the meaning of balance, and divides this balance into two parts, namely numerical and proportional equality. In numerical equality, human beings are equalized before the law, while in proportional equality, it is more about balance in giving what is the right of each person.<sup>24</sup>

## CONCLUSION

The judge's consideration in the case of narcotics crimes so that there is a disparity in the Praya District Court where the judge in imposing criminal sanctions for defendants who abuse narcotics, the judge considers aggravating and mitigating factors. Aggravating matters include the record of defendants who have been convicted before, causing unrest in the community, and not supporting the government's program in eradicating narcotics. Meanwhile, mitigating factors can be in the form of the defendant's cooperative attitude during the trial, frankness about his actions, and a promise not to repeat his actions in the future. Disparities in narcotics crime cases according to justice theory are seen from law enforcement carried out to obtain cold legal justice. Different verdicts on similar cases can be considered unfair, because they ignore the principle of "equivalence" between guilt and punishment. Meanwhile, from the perspective of restorative justice, the lack of consistency in providing rehabilitation to addicts shows that there is no orientation for fair recovery for the perpetrator. This disparity has the potential to weaken public trust in the justice system, as well as create legal uncertainty and a sense of injustice, both for defendants and the public.

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<sup>24</sup> Adil dan Keadilan Menurut Plato, Aristoteles dan Hans Kelsen", dalam Rambu Claudia Magi Dedo ngara, Analisis Yuridis Terhadap Putusan Pengadilan yang Membebaskan Pengedar Narkotika Golongan I (sabu-sabu) (Studi Kasus Putusan Nomor 17/pid.sus/2022/pn. plk), *Jurnal Artemis Law Journal*. 2024. p. 600.

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