

## Disparities Criminal Case Against Judge's Decision In Crime Of Narcotics Abuse Viewed From The Purpose Of Criminal Law

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Abstract. Criminalization of the criminal case of narcotics abuse by the judges are very diverse. The aim of research to find out and analyze why the disparity in the criminal verdict against narcotics abuse criminal case, how the implementation of the basic objective of sentencing disparity in the criminal verdict against narcotics abuse criminal case. Methods are juridical sociological approach using primary data from interviews with relevant parties associated secondary data of materials applicable laws or regulations. The results of the study, 1) criminal disparity in criminal narcotics abuse, cause by the impact of the crime of narcotics abuses, committing criminal background narcotic abuse, the persuasive principle of Presedent, The existence of freedom and independence of the judge in the 1945 Constitution, the laws existing judicial power, the theory of dissenting opinions, and the doctrine of *res judicate hebetur pro veritate*. 2) Implementation of the objective of sentencing in criminal disparity criminal case of narcotics abuse, contained in the formulation of a special minimum punishment in Act No. 35 of 2009, is to meet the demands of society and the effectiveness of the influence of general prevention. of punishment meted out, the final attempt of criminal law and serves as a special precaution, prevention against the perpetrators to obtain deterrence and rehabilitation for himself.

Keywords: Narcotics abuse; Criminal Disparities; Objective Punishment.

### 1. Introduction

Narcotics abuse is happening, very negative consequences for the lives and values of the national culture that will ultimately weaken national security.<sup>3</sup> Therefore, Narcotics abuses or narcotics is no longer seen as an ordinary crime but was already an extraordinary crime, against narcotics abuse is a very complex problem, which requires prevention efforts in a comprehensive manner involving cooperation multisectoral, multidisciplinary and continuous public participation and active and consistent.<sup>4</sup> Indonesia as the country that adheres to the teachings and principles of the rule of law in which the law is enforced as policy guidance and direction in carrying out the principles of the nation and state.<sup>5</sup> Forming a legal product on narcotics namely Act No. 35 of 2009 on Narcotics, which until now the regulations in enforcing the law against narcotic crime. The existence of this particular criminal offense due to the changing times in which the crimes were carried out increasingly sophisticated *modus operandi* (how to commit a crime) are increasingly complicated.<sup>6</sup> So the judges who

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<sup>4</sup> Ar. Sujono dan Bony Daniel, 2013, *Komentar dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*, Sinat Grafika, Jakarta, p.15

<sup>5</sup> Darmoko Yuti Witanto Dan Arya Putra Negara Kutawaringin, 2013, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana*, Cv. Alfabeta, p.1

<sup>6</sup> Eddy O.S. Hiariej, 2015, *Prinsip-Prinsip Hukum Pidana*, Cahaya Atma Pustaka, Yogyakarta, p.24-25

are part of the law enforcement agencies are required to be careful in making a decision.

An important part of the process of law enforcement is at the time of hearing that occurs when judges examine and try something case. Basically conducted by a judge is to check the reality of the matter, and punish him with regulations. At the time it was decided about how or what the law applicable to a case, then at that time law enforcement peaked.<sup>7</sup> Under the provisions of Article 24 of the Constitution of the Republic of Indonesia in 1945, Act 8 of 1981 on Criminal Procedure Code, Act 48 of 2009 on Judicial Power. But in its development does not infrequently lead to a decision of the criminal disparity in the decision concerning the crime of narcotics abuse.

Disparities in criminal or distinction of sentencing the judge's decision to make its own problems against the rule of law because there are two sides of conflicting views, from the side of the defendant and the public will judge that the decision was not fair because in the case of same clauses as indicted together, in evidence and the judge's decision but in the case of inequality can occur sentencing heavier or lighter. Shaping public attitudes toward law enforcement will decline, due to mistrust and dissatisfaction with law enforcement. For example, some cases of narcotics abuse in Pati District Court are as follows:

- Case No.83 / Pid.Sus / 2018 / PN.Pti, in violation of Article 127 paragraph (1) letter a, imprisonment of 1 year and 6 months.
- Case No.51 / Pid.Sus / 2018 / PN.Pti, in violation of Article 127 paragraph (1) letter a, imprisonment for one year.
- Case 210 / Pid.Sus / 2016 / PN.Pti, in violation of Article 127 paragraph (1) letter a, imprisonment for 10 months.
- Case No.88 / Pid.Sus / 2018 / PN.Pti, in violation of Article 112 paragraph (1), imprisonment of 4 years and 3 months.
- Case 103 / Pid.Sus / 2018 / PN.Pti, in violation of Article 112 paragraph (1), 4 years imprisonment.

On the other hand the disparity in the criminal verdict is the space given in the Law of Justice, in Act 48 of 2009 on Judicial Power, explicitly stated that the principal task of a judge is receiving, examining judge, decide and resolve each case are proposed. In deciding a case the judge shall explore, and understand the legal values and sense of justice in society.<sup>8</sup> In addition, the judge as the representative of God in the world also should pay attention to three basic concepts that confidence, recognition and manifestation (expression) in the act which is the subject matter of the teachings of divinity.<sup>9</sup>

The trial is the aim to gain certainty and fairness to the parties in the conflict, so it can be assured that the legacy of individualism or liberalism who fight for freedom and the interests of the individual greatly affected public perceptions about fairness

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<sup>7</sup>Satjipto Rahardjo, 2014, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, p. 192-193

<sup>8</sup> Article 5 (1), Act No. 48 of 2009 on Judicial Power

<sup>9</sup> Sri Endah Wahyuningsih, *Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa*, Jurnal Pembaharuan Hukum, Volume 1 No.1 January-April 2014

Indonesia.<sup>10</sup> On the basis of the above description, then problem formulation as follows: 1) Why the disparity in the criminal verdict against criminal case of narcotics abuse? 2) How to implement the objective of sentencing on the basis of the disparity in the criminal verdict against criminal case of narcotics abuse?

## Research Methods

This research used juridical sociological research that begins by using primary data from interviews with relevant parties are then connected to the secondary data on substances laws or regulations in force. This study aimed to find *In concreto*, that disparities in the criminal verdict against criminal case of narcotics abuse in terms of the purpose of the criminal law.

## 2. Discussion

### 2.1. Disparities in the Criminal Justice Decision In Case Against the Crime of Narcotics Abuse.

Verdict against the crime of narcotics abuse is also a consequence of a criminal justice system both in terms of law enforcement and its legislation, of enforcement at the stage of the investigation by the Police then up to the stage of prosecution by the Attorney and eventually come to the determination that the verdict by Judge.

Under Article 1 point 9 Criminal Procedure Code states that the judge is a judge acts to receive, examine, and decide criminal cases based on the principle of free, fair and impartial in the trial in the case and in the manner set forth in the Act. A judge must be free, meaning that should not be affected by the intervention of any party. Honest is a rapprochement between who believed in their hearts to be disclosed in the verdict. While not favoring a neutral stance in the treatment of the parties at the hearing.<sup>11</sup>

Act 48 of 2009 on Judicial Power, explicitly stated that the principal task of a judge is receiving, examining judge, decide and resolve any matter that is submitted. In deciding a case the judge shall explore, and understand the legal values and sense of justice in society.<sup>12</sup> In addition, each judge shall render judgment or written opinion on the case that is being examined which became an integral part of the decision.<sup>13</sup> then the verdict aside must contain reasons and grounds of this decision also contains a specific chapter of the legislation in question or the source of unwritten laws which serve as the basis to judge.<sup>14</sup>

In Act narcotics there are policies include specific minimum penalty of an aberration of the Criminal Code system. In formulating criminal threats, the Criminal Code adopts a maximum therefore rules / sentencing in the Criminal Code maximum system oriented, there are no rules / criminal system to apply a special minimum system.

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<sup>10</sup> Romli Atmasasmita, 2017, *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan*, Gramedia Pustaka Utama, Jakarta, p.26

<sup>11</sup> Darmoko Yuti Witanto Dan Arya Putra Negara Kutawaringin, *Op.Cit*, p.19-20

<sup>12</sup> Article 5 (1), Act No. 48 of 2009 on Judicial Power

<sup>13</sup> *Ibid*, Article 14 paragraph (2)

<sup>14</sup> *Ibid*, Article 50 paragraph (1)

Deviations Act beyond the Criminal Code to the existing system in the Criminal Code can indeed be done, but should be accompanied by guidance or regulations the implementation of penal minimal special, because without guidance / special rules could cause problems are problems of inclusion, trial, concursus, recidive, and other reason mitigation / criminal weighting. In practice judges have difficulty implementing these minimal criminal threats so that criminalize under threat is minimal.<sup>15</sup> Therefore, the judges who convict the decision should be completely oriented legal justice, moral justice, and the social justice.

The diversity of the mention of the term in the Act, causing confusion for law enforcement in the implementation.<sup>16</sup> Act No. 35 Of 2009 on Narcotics has given a different treatment for narcotics abusers. Users or addicts as criminals by imprisonment of narcotics is given to the perpetrators of narcotics abuse.<sup>17</sup>

Disparities must be seen as the difference in viewpoint judge deciding a case similar to interpret one or more parts in the formulation of laws which apply in a particular case, a different interpretation is then logically rational influence the consideration of judges in deciding guilt or innocence of the accused, or severe severity of sanctions to the defendant proven legally and convincingly perform acts that are prohibited under the legislation.<sup>18</sup> In deciding the judges always pay attention juridical considerations, also pay attention to the internal factors of one case is as follows:

- Impact of Crime of Narcotics abuse  
Penyalahgunakan narcotics could lead to a result that is very detrimental to the individual or society, especially generansi youth, it would be detrimental if it is accompanied by abuse and illicit trafficking that could result in serious injury to the life and cultural values of the nation that will ultimately weaken national security. The impact of the offenses subsequent narcotics abuse is for the actors themselves can lead to addiction, emotional offender can not be controlled, not able to think clearly because the nerves have been compromised, families feeling, disrupt order in the society.
- Background Crime Narcotics Abuse  
The background of narcotics abuse among other things because of ignorance about who used narcotic which is prohibited as well as an act against the law and narcotics abuse with overt know it is forbidden and not allowed, but the perpetrators continue to use narcotics, then the crime of narcotics abuse conducted private and hidden discreetly and against the crime of narcotics abusers who use narcotics by means of the group. Besides background criminal act of abuse of narcotic of the motives or goals that can be differentiated which aims to try to use, and use because it often and use as a livelihood.

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<sup>15</sup> Barda Nawawi Arief, 2010, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan, Kencana*, Jakarta, p.197-198

<sup>16</sup> Hera Saputra dan Munsyarif Abdul Chalim, *Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)*, Jurnal Daulat Hukum, Vol. 1. No. 1 March 2018

<sup>17</sup> Andri Winjaya Laksana, *Tinjauan Hukum Pemidanaan Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi*, Jurnal Pembaharuan Hukum Volume II No.1, January-April 2015

<sup>18</sup> Danang Wijayanto, 2014, *Disparitas Putusan Hakim Identifikasi Dan Implikasi*, Sekretaris Jenderal Komisi Yudisial Republik Indonesia, Jakarta, p.261-262

- The behavior of the defendant at trial  
Judge given discretion to mengespresikan traits defendant in the trial as a consideration in bringing down the size of the criminal among them are some of the behavior of the accused in the trial that is testified by honest and uncomplicated so that the proceedings journey smoothly, regretting the deed is done, it will not repeat such conduct, and was never punished.
  - Evidence Crime Narcotics Abuse  
Evidence in criminal acts of abuse of narcotic serves as strengthen the evidence presented at trial, the evidence from the judge can find and get a conviction on the criminal offenses of narcotics abuse had actually occurred and conducted by the accused.
  - Indictment and Criminal Charges  
The indictment which is the most important basis for the criminal procedural law by virtue of a court examination that is performed. Criminal charges in criminal procedural law is the authority of the public prosecutor
  - Personal Factor of Judges  
In determining the size of the crime, the judge is not merely using reason and common sense, but also requires a deep reflection, and sharpness of conscience, determine the severity of the crime is a job that involves feelings for determining the size of the criminal can not always be measured by the benchmark facts court.<sup>19</sup>
- In addition to dropping a criminal to pay attention juridical considerations, internal factors, there are also external factors than on a case is as follows:
- Legal factors; In the positive Indonesian criminal law, judges have very wide freedom to choose the type of crime (*strafsoort*) which will, in connection with the use of alternative systems in criminal threats in the Act.<sup>20</sup>
  - The Persuasive Principles Of Presedent; Indonesian state adheres to the principle of The Persuasive Of Presedent that according to this principle judges are given the freedom to decide a case without being bound by the judge's decision earlier.
  - Factors existence of Freedom and Independence of the Judiciary In the Constitution 1945; Understanding the judiciary is free and independent based on the book of Judges Code of Conduct issued by the Supreme Court of the Republic of Indonesia ran a series of basic principles as morality and must be upheld by judges in Indonesia, both in and outside the duty.
  - Law Factor Judicial Authority; Principle freedom judge or *discretionary judicial power* fully guaranteed in Article 1 of Act No. 48 of 2009 on Judicial Power.
  - Theory Dissenting Opinion; *Dissenting Opinion* according to Abraham Amos HF is the difference about the ruling of the law in a particular case, in a pluralistic society and multi-culture, differences about the understanding of law have become commonplace.
  - The doctrine of *Res Judicate Pro Veritate Hebetur*; *Res Judicate Pro Veritate Hebetur*, Res Judicate commonly abbreviated comes from the Latin "*Res Iudicata*" which means something that has been decided. Black's Law Dictionary, sixth

<sup>19</sup> Interview with Agung Iriawan, SH, MH as Judge and Public Relations Court in Pati District

<sup>20</sup> Muladi Dan Barda Nawawi Arief, 2010, *Teori-Teori Dan Kebijakan Pidana*, Alumni, Bandung, p.56

edition, formulate *res judicata* as: "This case was decided, the thing that is legally actionable or decided. A case or issue resolved by the judgment. Rules final judgment given by a court of competent jurisdiction on the merits of convincing on the rights of the parties and their private, as they are, which is an absolute right for the next action involves a claim demand or cause of action."<sup>21</sup>

## **2.2. Implementation Objectives Criminalization With Occurrence Basic Criminal Disparities In Case Against Judge Verdict On Narcotics Abuse**

The purpose of punishment which is the general teaching or construction conceptual common in criminal law, as long as it is not defined in the Criminal Code now applies, but only found in the lesson or the science of criminal law that is generally taught in the faculties of law whereas the purpose of punishment is very central and fundamental, for the purpose of sentencing is the soul / spirit / spirit of the criminal system.<sup>22</sup>

According to Simons, the primary basis of a criminal is a general prevention, basic secondary special precautions. Criminal primarily aimed at the general precautions located on the criminal threat in the Act. If this is not enough and are not effective in terms of general deterrence it, only then held special precautions, which lies in the scare, improve and make powerless criminals. In this regard it should be remembered that the sentence imposed should be in accordance with or based on the laws of society.<sup>23</sup>

Their criminal formulation using minimal system specialized in Act No. 35 of 2009 on Narcotics considered a criminal weighting, according to Barda Nawawi Arief constituted by:

- The fact is very striking disparity of criminal offenses for which essentially no different quality;
- Their desire to meet the demands of people who want an objective minimum standards for certain offenses highly criticized and hurt / harm society / state, as well as offenses that dikualifisir or aggravated by the result (*erfolgsqualifizierte delikte*)
- Their desire to further streamline the effect of general prevention against certain offenses that are considered dangerous and disturbing the public.<sup>24</sup>

Disparities in sentencing the criminal happens to the criminal case of narcotics abuse, is the embodiment of retaliation for making deterrence to criminal narcotics abuse. which in providing for the criminalization of the retaliation, noted the impact of the crime of narcotics abuse, background commit criminal acts of narcotics abuse, the behavior of the defendant at the trial, evidence of the crime of narcotics abuse. convictions handed down the final attempt of the criminal justice system that has a

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<sup>21</sup> Nimerodi Gulo Dan Ade Kurniawan Muharram, *Disparitas Dalam Penjatuhan Pidana*, Masalah-Masalah Hukum, Jilid 47 No.3, Juli 2018, p. 215-227

<sup>22</sup> Sri Endah Wahyuningsih, 2018, *Model Pengembangan Asas Hukum Pidana Dalam KUHP Berbasis Nilai-Nilai Ketuhanan Yang Maha Esa*, Fastindo, Semarang, p.113

<sup>23</sup> Adami Chazawi, 2014, *Pelajaran Hukum Pidana Bagian I*, Rajagrafindo Persada, Jakarta, p.167

<sup>24</sup> Barda Nawawi Arief in Ar. Sujono and Bony Daniel, op.cit, p.218

special meaning as prevention, prevention against the individuals themselves but to get retaliation also to make rehabilitation for himself.<sup>25</sup>

### 3. Closing

#### 3.1. Conclusion

Disparity in the criminal does not escape a judicial independence guaranteed by legislation, then oriented view of legal justice, moral justice, and the justice of society (social justice), which can be from attention to considerations legally, internal factors, there are also external factors by popularity. Criminal formulation in Act No. 35 of 2009 on narcotics by using formulate criminal special minimum in addition to criminal maximum public or criminal actions specific maximum is as weighting criminal because the judge in menjatuhkan criminal should not be lower than the minimum special even though not equitable because the law their the desire to meet the demands of people who want an objective minimum standard, their desire to streamline the effect of general prevention against certain offenses. Criminal disparity occurring in the criminal punishment of the perpetrators of the crime of narcotics abuse case, is the embodiment of vengeance to create deterrence for him and at the same time to improve themselves for having committed a criminal offense (Special Prevention).

#### 3.2. Suggestion

The government and the House of Representatives is expected soon to reform criminal laws particular to the Criminal Code, because during this time either objective of sentencing and / or sentencing guidelines in writing in the Criminal Code or other laws and regulations do not exist.

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<sup>25</sup>Interview with Agung Iriawan, SH, MH as Judge and Public Relations in Court Pati District

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