

Analysis of Disparity in Judges' Decisions in Narcotics Criminal Cases

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Abstract. *The purpose of this thesis is to identify and analyze the disparity in judges' decisions in narcotics crime cases in Indonesia. This study aims to identify and analyze the ideal model for judges' decisions in narcotics crime cases to minimize disparity in decisions in the future. This research is a normative juridical study that uses a case study approach, a statutory approach, and a comparative approach. The research specifications are descriptive and analytical. Secondary data sources are taken from primary legal materials, secondary legal materials, and tertiary legal materials. Data collection methods are through literature studies, and qualitative analysis techniques are used. The results of the study indicate that the disparity in judges' decisions in narcotics crime cases in Indonesia is found in the variation in decisions between rehabilitation and imprisonment for violations of the same article, which has the potential to reduce the sense of justice and weaken the legitimacy of the justice system. According to Gustav's legal objective theory perspective, disparity in sentencing for narcotics crimes can be justified as long as the disparity is based on rational, proportional, and transparent legal considerations. However, this disparity also demonstrates the need for clearer sentencing guidelines to optimally balance justice, legal certainty, and legal benefit. The ideal model for sentencing in narcotics cases to minimize disparities in future sentences is to reformulate regulatory norms regarding drug possession limits to clearly differentiate between users and dealers, allowing for fair, effective, and humane rehabilitation.*

Keywords: *Disparity; Drug Abusers; Judge's Decision.*

1. Introduction

Indonesia as a country of law guarantees its citizens to obtain justice in accordance with applicable law through the judicial power through the intermediary of justice. Article 24 paragraph (1) of the 1945 Constitution of the

Republic of Indonesia affirms that the judicial power is an independent power to administer justice to uphold law and justice. The spirit of Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia was then translated into Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.¹

Law Number 48 of 2009 concerning Judicial Power, Article 3 Paragraph (2) regulates the freedom of judges in determining the imposition of punishment, where the judge's decision cannot be interfered with by any party and is free from intervention by any institution. With this freedom of judgment, it is hoped that justice can be created in accordance with the spirit of humanity and social justice in society.

Sentencing disparity is closely related to the freedom of judges in deciding cases involving multiple defendants who committed the same crime. Sentencing disparity is almost always present in any criminal justice system, including in the eradication of drug crimes.

Regulations regarding narcotics crimes are regulated in Law Number 1 of 2023 concerning the Criminal Code, Law Number 1 of 2026 concerning Criminal Adjustments, as *lex specialis* regulated in Law Number 35 of 2009 concerning Narcotics.

The problem that arises is when drug addicts and abusers before using narcotics must first buy then store or control, possess, carry narcotics. If drug addicts and abusers are arrested while they are buying, storing or controlling, possessing, carrying narcotics then they will be subject to Article 111 in conjunction with Article 127 of the Narcotics Law or Article 609 of Law Number 1 of 2023 concerning the Criminal Code which were later amended by Law Number 1 of 2026 concerning Criminal Adjustments.

The application of Article 111 in conjunction with Article 127 of Law Number 35 of 2009 concerning Narcotics and Article 609 of Law Number 1 of 2023 concerning the Criminal Code will later create debate in court because there is a legal dilemma in distinguishing between distributors or perpetrators of pure crimes and abusers (victims).

If law enforcement officers incorrectly apply the provisions of the aforementioned articles to drug addicts and abusers, they will result in prison overcrowding. Data shows that 52.7 percent of prison inmates in Indonesia are drug convicts.²

¹Sudikno Mertokusumo, 2005, *Understanding Law: An Introduction*, Liberty Yogyakarta, Yogyakarta, p. 40

²<https://jdih.dpr.go.id/berita/detail/id/61596/t/Overkapasitas+Lapas%2C+RUU+Penyesuaian+Pidana+Momentum+Ubah+Paradigma+Penanganan+Narkotika>+ accessed on January 10, 2026

The consequences of overcrowding include poor health and psychological well-being for inmates and detainees, increased conflict between inmates, suboptimal and inconsistent prison development, and budget overruns due to increased consumption of water, electricity, and food. Ultimately, riots and escapes among inmates and detainees are commonplace due to inadequate supervision, resulting from an imbalance between the number of guards or correctional officers and the number of inmates.³ Furthermore, drug control within prisons is an unavoidable fact. The more overcrowded prisoners and inmates are in prisons, the larger the drug market within them will be.

Efforts to address overcrowding shouldn't stop at increasing prison and detention center capacity. They should also begin at the outset with law enforcement, implementing a restorative justice approach for drug cases. This approach primarily targets addicts, abusers, or victims of abuse. The author believes that imposing criminal sanctions on addicts, abusers, or victims of abuse is not the right approach.

However, in practice, differences are still found in the sentencing of criminal offenses even though the charges against the perpetrators use the same article. The object of study in this research focuses on the Banjarnegara District Court Decision Number: 57/Pid.Sus/2022/PN Bnr, Decision Number: 50/Pid.Sus/2024/PN Bnr, and Decision Number: 51/Pid.Sus/2024/PN Bnr. The three decisions show differences in the length of imprisonment, even though all are based on Article 127 paragraph (1) of the Narcotics Law. The differences are an important highlight because they raise questions about consistency and fairness in the application of the law.

Based on the example above, there are different judges' decisions between convicts, even in the same case and with the same basis for punishment. The legal ideal of upholding justice is reflected in the legal adage "fiat justitia et oereat mundus." Justice must be a value that a lawyer should be ready to stand for and die for in law enforcement practice. Justice always contains elements of appreciation, assessment, and consideration. Therefore, the mechanism of law is described as a balance of justice. Justice demands that everyone in the same circumstances receive an equal share.

Based on the background of the problem presented above, the author will present the following problem formulation: What is the form of disparity in judges' decisions in narcotics crime cases in Indonesia? What is the ideal model for judges' decisions in narcotics crime cases to minimize disparity in decisions in the future?

³Directorate General of Corrections, Ministry of Law and Human Rights, Hacking the Assimilation Policy for Prisoners, accessed from [http://www.ditjenpas.go.id/meretas Kebijakan-asimilasi-bagi-narapidana](http://www.ditjenpas.go.id/meretas-Kebijakan-asimilasi-bagi-narapidana), accessed on January 10, 2026

2. Research Methods

This research is a normative juridical type using the statutory approach method and case studies, the research specifications are descriptive analysis, data sources are obtained from secondary data taken through primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies and analysis techniques using qualitative.

3. Results and Discussion

3.1. Forms of Disparity in Judges' Decisions in Narcotics Crime Cases in Indonesia

According to Gustav Radbruch, law essentially has three main objectives: ensuring justice, providing legal certainty, and providing benefits to society. He argues that law should be used as a tool to achieve social justice, also ensuring appropriate legal protection for the rights of every individual. Furthermore, law should also have a utilitarian dimension, namely producing useful results and promoting public welfare. According to Radbruch, the balance between justice, certainty, and benefit is a fundamental pillar in realizing a just and balanced social order.

One of the criteria for evaluating the quality of judges' decisions and the performance of judicial institutions is their ability to represent the basic principles of legal objectives, such as justice, legal certainty, and legal benefits.⁴The quality of court decisions can be evaluated based on the balance of these three values when considering the considerations and outcomes of those decisions. However, in practice, judges have considerable flexibility in handing down decisions, which can lead to differences in sentencing from one case to another. These differences are referred to as criminal disparities, which can arise from various factors, both legal (related to law enforcement) and sociological (related to social conditions and the unique characteristics of the individual).

In determining the sentence, the judge relies on his personal beliefs, a principle also called the negative theory of proof (Negative Wettelijk Bewijstheorie).⁵This theory combines an objective evidentiary system, which is based on legal evidence, with an evidentiary system derived from the judge's personal beliefs, as well as through an examination of the legal facts revealed during the trial. According to the author's analysis, it appears that in the three cases studied, the judges have determined the relevant elements, namely the elements of each abuser and class I narcotics for themselves. In addition, the judges also

⁴Jumanah et al., *Public Law: Criminal and State Administration* (Yogyakarta: CV. Edu Akademi, 2025). P. 57

⁵Flora Dianti, *Criminal Evidence Law in Indonesia: Comparison of HIR and KUHP* (Revised Edition) (Jakarta: Sinar Grafika, 2024). P. 38.

considered other factors in their decisions, as indicated by the aggravating and mitigating circumstances for the defendant.

In decision number 57/Pid.Sus/2022/PN Bnr, the court considered several aggravating and mitigating factors related to the defendant. The aggravating factors are as follows: the defendant's actions have caused unrest in the community and are contrary to government policy that firmly combats drug abuse. Among the mitigating factors are the defendant's polite and honest demeanor during the trial, his lack of a prior criminal record, and his role as the family breadwinner.

In decision No. 50/Pid.Sus/2024/PN Bnr, the court also considered various aggravating and mitigating circumstances related to the defendant. The mitigating circumstances are as follows: the defendant's actions have caused unrest in the community and do not support government policy in combating drug abuse. Among the mitigating circumstances, the defendant's polite and frank behavior during the trial, the fact that he has never been convicted before, his role as the mainstay of his family in earning a living, and the defendant has three young children who are in dire need of parental attention and affection.

In decision No. 51/Pid.Sus/2024/PN Bnr, the court considered various aggravating and mitigating circumstances against the defendant. The aggravating factors include: the defendant's actions were inconsistent with government efforts to eradicate the distribution and use of narcotics. Meanwhile, mitigating circumstances include the defendant's sincere admission and expression of remorse for his actions, his polite behavior during the trial, his family, and his prior criminal record.

One of the main factors causing disparities in the three decisions analyzed by the author is the judges' consideration of the elements mentioned above. In addition, the judge's personal opinion (deep conviction) when making a decision also plays a determining role, considering that each judge has a different subjective interpretation of the legal elements and the defendant's situation. The differences between decisions No. 57/Pid.Sus/2022/PN Bnr, No. 50/Pid.Sus/2024/PN Bnr, and No. 51/Pid.Sus/2024/PN Bnr not only reflect the application of the principle of legal certainty. Indeed, all three decisions cite Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Narcotics. But they also reflect considerations of the principles of justice and legal benefit. The disparities in the decisions in these three cases will be linked through Gustav Radbruch's three legal objectives, namely justice, legal certainty, and legal benefit.

First, based on legal justice. According to Gustav Radbruch, justice is a fundamental principle of law that must be applied by ensuring uniform treatment for cases with similar characteristics and ensuring that everyone

receives fair treatment before the law, especially in the face of inequality or injustice in society.⁶ Although the three legal decisions analyzed by the author show variations in terms of prison sentences, namely 2 years and 6 months for decision No. 57/Pid.Sus/2022/PN Bnr, 1 year and 4 months for decision No. 50/Pid.Sus/2024/PN Bnr, and 11 months for decision No. 51/Pid.Sus/2024/PN Bnr, all of the above decisions are based on objective and proportional criteria. In all three decisions, the judges considered aggravating and mitigating factors, aggravating factors such as the defendants' actions that disturbed the community and hampered the government's program in combating drug abuse. Mitigating factors include the defendants' polite attitude, their confession and remorse, and the absence of previous convictions. Therefore, the application of these different sentences reflects the judges' efforts to uphold contextual justice, namely justice that is not only based on legal norms, but also considers the defendant's personal circumstances and the judge's moral beliefs in issuing a decision.

Second, legal certainty. According to Gustav Radbruch, legal certainty is one of the main pillars of the legal framework, requiring clear, precise, and uniformly applied norms. Legal certainty means that the law must establish clear guidelines for the public and law enforcement agencies, so that every legal action can be rationally defended and avoid ambiguity.⁷ This principle not only ensures uniform application of the law, but also provides protection to citizens from arbitrary actions and abuse of power by law enforcement officials. Regarding the three decisions studied, namely decision No. 57/Pid.Sus/2022/PN Bnr, decision No. 50/Pid.Sus/2024/PN Bnr, and decision No. 51/Pid.Sus/2024/PN Bnr, it is clear that the judges have demonstrated consistency in applying the principle of legal certainty. All three decisions are based on Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Narcotics, which stipulates that "any person who abuses class I narcotics for themselves can be subject to a maximum prison sentence of four (4) years." The uniform application of legal rules, as seen from the similarity of the legal basis in the three decisions, is a clear manifestation of legal certainty. In these three cases, the judge applied the concept of legal certainty as emphasized by Radbruch, namely that the applicable law must be clear, applicable, and guarantee the protection of individual rights.

Third, regarding the utility of law. According to Gustav Radbruch, the purpose of law is not limited to upholding justice and legal certainty, but also aims to provide benefits to society (expediency).⁸ The principle of expediency emphasizes that the application of the law should not be limited to sanctions or retaliation

⁶Indah Nur Shanty Saleh et al., *Reference Book of the Indonesian Judicial System: Process, Rights, and Justice* (Jambi: PT. Sonpedia Publishing Indonesia, 2024). P. 45.

⁷Edy Soni et al., *Introduction to Progressive Law* (West Sumatra: CV. Gita Lentera, 2024). P. 74.

⁸Sukardi, *Restorative Justice in Indonesian Criminal Law Enforcement* (Depok: PT. RajaGrafindo Persada, 2022). P. 6.

against violators, but should also aim for prevention, rehabilitation, and improving social welfare. Therefore, the law must have a positive impact on individuals and society as a whole. Regarding the three decisions in question: Decision No. 57/Pid.Sus/2022/PN Bnr, Decision No. 50/Pid.Sus/2024/PN Bnr, and Decision No. 51/Pid.Sus/2024/PN Bnr, the author analyzes that the judges had varying subjective opinions regarding the assessment of the level of culpability, reasons, and social impact of the defendants' actions. Judges who imposed heavier sentences argued that such sentences could have a deterrent effect and support the government's strategy to eradicate drug abuse. On the other hand, judges who imposed lighter sentences tended to prioritize humanitarian elements and rehabilitation, hoping that the defendants could return to society positively. The differences between these three decisions demonstrate that the importance of law is not solely assessed based on the uniformity of punishments imposed, but also on its ability to adapt to social conditions, the purpose of punishment, and the demands of societal justice. This aligns with Radbruch's view that ideal law is not a rigid norm, but rather a law capable of realizing social welfare and meeting the demands of justice in everyday life.

In addition, Gustav Radbruch explains that there are four main aspects related to the meaning of legal certainty:

a. Law is understood as something positive, in the sense that positive law refers to legislation that is currently in force.

In this study, this refers to the use of Law Number 35 of 2009 concerning Narcotics as the primary legal basis. Judges are bound by the minimum and maximum criminal provisions stipulated in this law. Disparities arise when, even though judges use the same legal basis, their interpretation of the limits of these sentences can vary. This is related to the decisions analyzed, namely that although the articles submitted are similar according to Article 127 paragraph (1), the sentences handed down by the panel of judges are different.

b. Law is born from a fact, which means its formation is based on the reality or facts that exist in society.

This aspect emphasizes that the law must be responsive to social realities. The relevance of this research is that judges should ideally consider these facts in depth, namely, mitigating and aggravating considerations based on the previously presented facts.

c. The facts stated in the law need to be formulated clearly so as not to give rise to errors in understanding or interpretation, and to facilitate its implementation.

Unclear legal formulations can create room for disparities. The lack of regulations governing minimum and maximum criminal penalties based on the amount of evidence leads to differing interpretations by judges. One judge may interpret a

small amount of evidence differently than another, indirectly impacting the severity of decisions, as seen in the three decisions analyzed by the author.

d. Positive law is ideally permanent and should not be changed easily.

This aspect emphasizes the stability and predictability of the law. In the three Banjarnegara District Court decisions analyzed, the judges consistently applied Article 127 paragraph (1) of the Narcotics Law, which remained unchanged, so that legal certainty in the sense of norm stability has been fulfilled. The disparity in sentencing that emerged did not stem from changes in positive legal norms, but rather was influenced by differences in the judges' considerations in applying the same legal provisions to the facts revealed in court.

It can be concluded that the disparity in sentencing in these three decisions is justifiable from the perspective of Gustav Radbruch's theory of the purpose of law, as long as it is based on rational, proportional, and transparent legal considerations. However, this disparity also demonstrates the need for clearer sentencing guidelines to optimally achieve a balance between justice, legal certainty, and legal benefit.

3.2. An Ideal Model for Judges' Decision-Making in Narcotics Crime Cases to Minimize Disparities in Decisions in the Future

Reformulating regulatory norms and limitations in the application of rehabilitation for drug abusers is an urgent need to ensure more proportional and humanitarian justice. From a sociological perspective, the main problem that arises is overcriminalization and overcrowding in correctional institutions due to the large number of minor drug users being sentenced to prison, even though the majority of them are merely victims of abuse who require rehabilitation, not imprisonment.⁹

The currently dominant repressive approach has created social stigma and cut off access to social recovery for users, thus exacerbating the problem of drug addiction in society. Therefore, reconstructing the nominal or grammage limits of evidence is crucial to distinguish users from dealers, allowing law enforcement officials to be more selective in implementing restorative justice as a social recovery effort.¹⁰

Regulatory weaknesses are evident in Law Number 35 of 2009 concerning Narcotics, particularly Articles 54 and 127, which still emphasize criminal punishment without providing explicit space for the implementation of restorative justice. Article 28H paragraph (1) of the 1945 Constitution guarantees

⁹Barda Nawawi Arief, *Criminal Law Policy: Developments in the Drafting of the New Criminal Code*, Jakarta: Kencana, 2018, p. 145.

¹⁰M. Syamsudin, "A Restorative Justice Approach in Handling Minor Narcotics Cases," *IUS QUIA IUSTUM Law Journal*, Vol. 26 No. 2, 2019, p. 256

the right to health, which should be used as a constitutional basis for placing drug addicts or users as subjects entitled to rehabilitation. In addition, Supreme Court Circular Letter (SEMA) Number 4 of 2010 only provides administrative guidelines without the normative force of a law, thus giving rise to disparities in decisions and legal uncertainty. Reformulating norms by adding provisions regarding nominal limits (for example, crystal methamphetamine under 1 gram, marijuana under 5 grams, ecstasy under 3 pills) can provide an objective basis for distinguishing between self-abusers and illicit traffickers. This is in line with the principle of *ultimum remedium*, which places imprisonment as a last resort, as well as the principle of restorative justice, which emphasizes recovery rather than retribution.

Based on an evaluation of SEMA No. 4 of 2010 and judicial practice, the application of nominal drug limits for users still creates legal uncertainty. The absence of explicit norms in Law No. 35 of 2009 concerning Narcotics means that these thresholds are only sourced from internal guidelines of the Supreme Court, not from statutory norms binding across law enforcement agencies (investigators, prosecutors, judges). Furthermore, the lack of integration between nominal limits and restorative justice mechanisms means that light drug users remain at risk of repressive processing, even though philosophically and sociologically, they are more appropriately placed in medical or social rehabilitation. This norm reconstruction refers to and improves the following legal provisions:

- 1) Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which guarantees fair legal certainty;
- 2) Articles 54 and 127 of Law Number 35 of 2009 concerning Narcotics, which regulate rehabilitation for addicts;
- 3) SEMA No. 4 of 2010 concerning the threshold for narcotics users;

Based on the explanation above, the Proventus explained that the ideal model for handing down judges' decisions in narcotics crime cases to minimize disparities in decisions in the future is to reformulate legal regulations on narcotics possession so that the distinction between users and dealers becomes clear, so that rehabilitation can be implemented fairly, effectively, and humanely.

In relation to this, isn't it related to the limits of someone who can be considered an addict, dealer or victim of drug abuse regulated in SEMA No. 4 of 2010 concerning the Determination of Abusers, Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions?

Then, regarding the difference in the disparity between drug addicts and drug abusers who are rehabilitated or not, isn't it stated in Article 103 of Law No. 35 of 2009 concerning Narcotics that states:

(1) Judges who examine cases involving drug addicts can:

- a. Decide to order the person concerned to undergo treatment and/or care through rehabilitation if the drug addict is proven guilty of committing a drug crime; or
- b. Determine to order the person concerned to undergo rehabilitation if the drug addict is not proven guilty of committing a drug crime.

Therefore, the word "may" in Article 103 of the Narcotics Law above only grants judges the authority to decide on rehabilitation, not an obligation. Therefore, Article 103 of the Narcotics Law needs to be revised.

4. Conclusion

The disparity in judges' decisions in narcotics crime cases in Indonesia is found in the variation in decisions between rehabilitation and imprisonment for violations of the same article, which has the potential to reduce the sense of justice and weaken the legitimacy of the justice system. According to Gustav's legal objective theory perspective, disparities in sentencing for narcotics crimes can be justified as long as they are based on rational, proportional, and transparent legal considerations. However, these disparities also indicate the need for clearer sentencing guidelines so that the balance between justice, legal certainty, and legal benefits can be optimally achieved. The ideal model for judges' decisions in narcotics crime cases to minimize disparities in decisions in the future based on a comparative study with the Netherlands is by reformulating regulatory norms regarding the limits of narcotics possession and reformulating Article 103 of the Narcotics Law, so that the distinction between users and dealers becomes clear, so that rehabilitation can be implemented fairly, effectively, and humanely.

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Decision number 57/Pid.Sus/2022/PN Bnr

Law Number 1 of 2023 concerning the Criminal Code;

Law Number 1 of 2026 concerning Criminal Adjustments;

Law Number 20 of 2025 concerning the Criminal Procedure Code;

Law Number 35 of 2009 concerning Narcotics;

Law Number 48 of 2009 concerning Judicial Power

SEMA No. 4 of 2010 concerning the threshold for narcotics users

The 1945 Constitution of the Republic of Indonesia;