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Legal Certainty in the Application of the Crime of Narcotics Abuse Judging from the Disparity of Judges' Decisions*

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Abstract

Law Number 35 of 2009 Concerning Narcotics was passed by the government as part of its efforts to combat drug trafficking (abbreviated as Law on Narcotics). A penalty under the Narcotics Act includes the death sentence. There are two types of drug abusers: "Users" and "Dealers." The Narcotics Law, which oversees the policy of criminal punishments against drug abusers, divides them into these two groups. This study employs a statutory framework for qualitative research. Rechtsvinding, a method used frequently by courts in the area of interpretation, will also be examined. Analogical interpretation methods, including those used by judges, were found to be a significant reason to the disparity in drug crime verdicts after the study's findings were compiled. In criminal law, analogous interpretation is prohibited if it results in a broader definition of the offense being defined. When necessary, a similarly construed interpretation may be used to fill in the gaps left by the statute.

Keywords: Disparity; Judge; Drugs

Abstrak:

Upaya untuk memberantas kejahatan narkoba menghadirkan sebuah Undang-Undang yang memiliki sanksi pidana yaitu Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika (disingkat UU Narkotika). Sanksi Pidana dalam Undang-Undang Narkotika salah satunya adalah sanksi pidana mati. Undang-Undang Narkotika mengatur mengenai kebijakan sanksi pidana bagi pelaku penyalahgunaan narkoba yang dibagi kedalam dua kategori yaitu pelaku sebagai "Pengguna" dan/atau "Pengedar". Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan peraturan perundangan-undangan. Selain menganalisis Metode penemuan hukum (rechtsvinding) yang sering digunakan hakim dalam melakukan interpretasi. Hasil penelitian menyatakan bahwa penyebab disparitas putusan hakim dalam perkara tindak pidana narkotika adalah adanya perbedaan hakim dalam menggunakan metode penafsiran hukum, seperti penggunaan penafsiran secara analogis. Penggunaan metode penafsiran analogi di dalam lapangan hukum pidana terlarang sejauh ia membuat suatu rumusan delik menjadi diperluas. Penafsiran secara analogi diizinkan apabila digunakan untuk mengisi kekosongan yang terdapat di dalam Undang-Undang.

Kata Kunci: Disparitas; Hakim; Narkoba

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A. INTRODUCTION

As defined in Article 1 of the Law No. 35 of 2009 on Narcotics: chemicals or medications derived from plants or non-plants, both synthetic and semi-synthetic that can induce a decrease or change in consciousness, loss of taste, and diminish or eliminate pain and can develop dependence.⁴ Under Law Number 35 of 2009 concerning Narcotics, Article 1 point 6 is commonly known as illicit narcotics and narcotic precursor trafficking.

Narcotic misuse is impacted by a variety of factors, including the availability of narcotics, as well as personal, social, cultural, and environmental factors. Everyone involved in the illegal narcotics trade does it for a variety of different reasons. Because of the advancements in science and technology, drugs can now be processed in so many different ways and for so many different reasons.⁵

An investigation of legal certainty in the criminal act of drug abuser will not appear until it is enacted and enforced. The legislation must be enforced by authorities (practical law enforcers). It is important to have legal certainty in order for legal certainty to be applied. It is the goal of positive law to respond to the real concerns of the public and to bring about a sense of stability and predictability.

Article 1 Paragraph (1) of the Criminal Code states the underlying notion of legal certainty based on the principle of legality. A crime cannot be prosecuted unless it has been explicitly defined by the law at issue, according to the text. This principle relates to three (three) other principles of legality: As a start, I'd like to state: *Nullum crimen, nulla poena sine lege praevia*. According to this idea, there is no such thing as a criminal conduct or a crime unless it is governed by the law. *Nulla poena sine lege praevia*, the principle that criminal law does not apply retroactively, has the effect that criminal law does not apply retroactively. As a second point, it is important to understand the concept of zero-tolerance crime and punishment, or zero-tolerance zero-tolerance. This theory argues that a criminal conduct or a crime does not exist unless it is governed by specific statutory provisions. As a result of this guiding concept, any conduct that is both illegal by law and subject to legal repercussions must be conspicuously prohibited.⁶

The definition of "freedom of judges" is regulated in Article 24 paragraph (2) of the 1945 Constitution and Article 1 of the Law. Number 48 of 2009 concerning Judicial Power, states that: "Judicial power is the power of an independent state to organize courts to enforce law and justice based on Pancasila, for the sake of the implementation of the constitutional state of the Republic of Indonesia."

According to the Criminal Code, which codifies criminal law, there is no clear definition of what the goals and guidelines for punishment are. As a result, in practice

⁴ Lihat Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika

⁵ Lihat Moh. Makaro Taufik, Suhasril, dan Moh. Zakky, *Tindak Pidana Narkotika*, Cetakan Kedua. Bogor: Ghalia Indonesia, 2005, hlm. 19.

⁶ Eddy OS Hiariej, *Asas Legalitas dan Penemuan Hukum Dalam Hukum Pidana*, Jakarta, Erlangga, 2009, hlm. 4-5.

in criminal courts, different interpretations arise depending on the point of view of each law enforcement officer (police, prosecutors, and judges). The possibility of alternative approaches to a given situation. It's not uncommon to see a narcotics case where the offender is caught, proven to have broken one law, then prosecuted and found guilty or not guilty by a judge of breaking another law when they're in the hands of a prosecutor and a judge. Judges are the major players in the judicial process, and they are expected to uphold the rule of law and fairness in the decisions they make. To God Almighty and to the community, especially those seeking justice, judges must always be held accountable for their actions and their rulings.

Even though the punishments are for the same crime, discrepancies in the judge's decision might raise a number of questions, not the least of which is whether or not the defendant feels dissatisfied with the judge's decision. Because of this, it is imperative to conduct oneself in such a way as to provide a fair and harmonic punishment. It's impossible to compare one judge's sentence to another's, even if the instances are identical because the sentencing issue is so personal for a judge. We can't talk about 'uniformity of punishment' in this scenario, but we may look for a way for judges to reach a consonant of deliberation in making choices, which will ultimately lead to a resemblance in sentencing.

B. METHODS

The author of this work uses qualitative research methods in conjunction with a normative juridical approach. When it comes to the law, the juridical approach relates to the laws and regulations that are in effect, but the normative approach is based on secondary facts in the realm of law. When it comes to secondary data, it is comprised of main legal materials, secondary legal materials, and tertiary legal materials, which means that when processing and evaluating these legal materials, one cannot avoid the many interpretations that are recognized in legal science.

C. RESULTS AND DISCUSSION

1. Judge's Decision in Narcotics Crime Case

Judges have the primary responsibility of interpreting and enforcing the law through the issuing of judgements based on their findings of fact and conclusions of law. Because it has directly bound certain parties, a judge's decision, which is a legal product of the judiciary, is frequently utilized as jurisprudence because it has permanent legal effect.⁷

Law Number 48 of 2009 on Judicial Power states that the issue of the judge's judgment in a case must have an explanation for why they made their decision, which is why Article 50 and Article 53 of that law have been used to clarify this. With this set of rules in place, the judge is bound to hear any matter presented to him and is barred

⁷ Bagir Manan, *Hukum Positif Indonesia Suatu Kajian Teoretis*, Yogyakarta, FHUII Press, 2004, hlm. 1.

from passing judgment on anything that has not been requested or from rendering a judgment that goes beyond what has been requested.⁸

Drug abuse is a particularly heinous crime that warrants the utmost attention from the Indonesian government, as it not only has a significant negative impact on society and the nation as a whole but also threatens the very foundations of the state and has the potential to impede the country's progress toward development. Drugs are becoming a national security issue that must be addressed and dealt with strongly.⁹

Article 1 Number 15 of the Narcotics Law imposes strict penalties for drug users. People who abuse drugs do so without regard for their own rights or the requirements of the law. Additionally, the Drugs Law explains the classification of narcotics in terms of categories I, II, and III, where narcotics are categorized. The use of Class I narcotics for the benefit of health services is prohibited. Article 127 paragraph (2) jo of the Narcotics Law is interesting because it gives judges the power to decide on alternative sentences for marijuana-related offenses, as stated in Article 103 paragraph (1) of the Narcotics Law: *First*, Upon finding a defendant guilty of drug misuse, the judge has the authority to impose a rehabilitation sentence as a final and irrevocable decision against him or her. *Second*, For drug users who have not been proven guilty, the judge may rule that rehabilitation is not a final decision. While the individual has not been found guilty, they must nevertheless undergo rehabilitation as a way to ensure that drug users who have not been found guilty receive ongoing therapy and treatment..

When it comes to making a decision in a case, judges must follow a set of rules. Consequently, there is no incompatibility between the concepts of legal certainty and legal equity. It is still possible for judges to make decisions based on their own subjective considerations, such as the minimum and maximum penalty limitations. This means that judges can still rely on their own judgments when deciding cases as long as they stay within the sanction interval, which is particularly important in criminal law articles. The term "criminal disparities" refers to a judge's legal ability to make subjective judgments.¹⁰

Using sentencing guidelines is the best method to keep judges from abusing their powers. Sentencing guidelines should be 'strong and rigorous,' according to Asworth.¹¹

Article 14a, Articles 63-71, and Article 30 are all examples of rules that are already in the Criminal Code. As Article 103 of the Drugs Law implies, the existence of

⁸ Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman

⁹ Irwan Jasa Tarigan, *Narkoba dan Penanggulangannya*, Cetakan Pertama, Jakarta, Depublish, 2017, hlm. 5.

¹⁰ R. Tony Prayogo. *Penerapan Asas Kepastian Hukum dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2011 tentang Hak Uji Materiil dan dalam Peraturan Mahkamah Konstitusi Nomor 06/PMK/2005 tentang Pedoman Beracara dalam Pengujian Undang-Undang*. Jurnal Legislasi Indonesia, Kementerian Hukum dan Hak Azasi Manusia RI, 13 (2), 2016 . hlm. 194.

¹¹ Vivi Ariyanti, *Kebebasan Hakim dan Kepastian Hukum dalam Menangani Perkara Pidana di Indonesia*, Jurnal Mahkamah Vol. 4 Desember 2019, Purwokerto, hlm. 164.

this Narcotics Law has offered a new paradigm for the meaning of narcotics addicts themselves. Drug rehabilitation is supported not only by the Narcotics Law but also by the Circular Letter of the Supreme Court (SEMA) No. 4 of 2010 on the Placement of Narcotics Abuse. In addition, judges often utilize this as a basis for imposing rehabilitative terms.

This "special" Narcotics Law necessitates that law enforcement officials, in particular judges, be permitted to reflect on the articles' contents. It's because of the "two-track system" in the Narcotics Law that punishes the user with a rehabilitation sentence while punishing the dealer with a prison sentence up to and including execution.

To determine if a decision is progressive or not, the touchstone is the value of certainty, justice, and legal expediency. The synchronization of judges' decisions with applicable legal sources, such as legislation, jurisprudence, doctrine, treaties, and customs, is critical to ensuring legal certainty in the courts.

Formal stelsel norms are only one of the analyses when looking at the decision in terms of legal content (*formele normenstel-sel*). It is in this context that Friedman takes into account social ethics such as the ideals of truth and fairness in addition to the rule of law. The principles and norms that the public and the government utilize as a guide are collectively referred to as the "legal substance" component.

A glance at the issue of legal certainty reveals that the judge employs a variety of theoretical arguments. It is well-known that no appropriate theoretical justification for the ruling was discovered in this instance. Because of this, the judge's ruling is less reliable. It's important for judges to understand criminal sanctions theory before making a decision on criminal punishment. Revenge is limited to law enforcement in the first place, but there are others who can be used as a base for retaliation. For the sake of the rule of law, retaliation will only be used in extreme cases. There is no reason for retaliation if that is not the case. As a secondary objective, ensuring the safety of the broader community. When utilizing punishment to safeguard the community, there must be a limit, and the pain must be matched with the actions. Retaliation and the duty to safeguard the community begin at this point.

The pattern of criminal policies is in line with the provisions in Article 103 of Law Number 35 of 2009 which states that:

- 1) Judges who examine narcotics addict cases may:
 - a. Decision to mandate treatment and/or treatment for the person in question if the drug user is found guilty of a narcotic crime; or
 - b. It has to be agreed that if the drug addict is not found guilty of a drug crime, a treatment order will be issued.
- 2) As specified in paragraph (1) letter a, the period spent receiving therapy and/or treatment for drug users is added together to determine the length of time spent serving the sentence in prison.

Determining whether or not a defendant is dependent on drugs abuse, the judge may order that the defendant undertake treatment and/or rehabilitation. The use of the term "can" can be construed as meaning that the court is not required to order the defendant to undergo treatment and/or therapy at all times. When applying these regulations, the judge must exercise wisdom and caution in order to ensure that the goals and objectives are appropriately realized. Similarly to the statement made by Bassounian that the goal of criminals is to protect social interests, including maintaining public order, protecting community members from crimes, losses, or unjustifiable harm caused by others, re-socializing (resocializing) criminals, and maintaining or preserving the integrity of fundamental beliefs in social justice, human dignity, and individual justice.

For the most part, when it comes to questions of punishment, such as what kind of crime was committed, how long of a sentence was given, and how the crime was carried out, this is what we mean. Scientific advances in crime and punishment have placed a greater emphasis on the bravery of judges to use punishments properly to combat crime. In Edi Djunedi's opinion, "the judge's freedom to impose a criminal (judicial discretion in sentencing) is based on modern thinking in criminology that is influenced by psychology and other social sciences, which emphasizes that in imposing a criminal, the judge must use the principle of individualization, in accordance with the crime and its perpetrators."¹²

2. Causes of Disparity and the Effect of Judges' Independence on Sentencing Disparities

Differences in punishment philosophy, sentencing standards, autonomous judicial authority, difficulty in conquering discretion, ability among judges in interpreting the law, and morality considerations all contribute to criminal discrepancies in narcotics crime cases.¹³

a. Factors of Differences in Criminal Philosophy

In narcotics cases, inequalities in sentencing can arise because of the differing judicial views. Criminal disparity, for example, results if district court judges adhere to a retrograde view of retributive punishment while Supreme Court justices adhere to a forward-looking utilitarian view of punishment. However, criminal inequities can be eliminated if district court, high court, and Supreme Court judges all have a forward-looking perspective while imposing a crime.

b. Factors Absence of Criminal Guidelines

One of the factors contributing to criminal inequalities in narcotics crime cases in Indonesia is the lack of sentence guidelines for judges. Guidelines for punishment in

¹² Gregorius Aryadi, *Putusan Hakim Dalam Perkara Pidana (Studi Kasus Tentang Pencurian Dan Korupsi Di Daerah Istimewa Yogyakarta)*, Yogyakarta, Universitas Atma Jaya, 1994, hlm. 3.

¹³ Devy Iryanthi Hasibuan, *Disparitas Pemidanaan Terhadap Pelaku Tindak Pidana Narkotika*, USU Law Journal, Vol.3. No.1, April 2015, hlm. 93.

Indonesia are not explicitly a standard guideline for court judges in Indonesia that may be used as a guideline in applying criminal punishments in the same way that guidelines for punishment in the United States have been established. In fact, there are no set sentence criteria even in the Indonesian Criminal Code.¹⁴

c. Factors From Independent Judicial Authority

Another element contributing to criminal disparities in general and narcotics crime cases specifically is the existence of independent judicial authority conferred on judges by the state. The authority of the court has been defined by Law Number 48 of 2009 concerning Judicial Power, which also serves as a guide for judges in the performance of their duties and authorities in criminal cases. Decisions on cases by the courts that are carried out independently form the foundation of a functional legal system, according to Bagir Manan. In order to ensure that the government does not meddle in the courts, it is the judges who must determine the cases, he says. It is not unexpected that Bagir Manan remarked that locals have expressed dissatisfaction with the role of judges in their position as an autonomous institution.¹⁵ The correct functioning of the legal system is dependent on the proper sentencing of criminal acts against offenders of criminal acts in general and drug offenses in particular in trials based on an independent judicial power. According to the government, every individual will be required to act in accordance with applicable law. The judicial power is independent and free in deciding a case that has been brought to the judges since it is only based on the law that is applicable.

d. Factors of Judge's Discretionary Authority

The delegation of discretionary authority to court judges in Indonesia has the potential to exacerbate criminal inequities in criminal cases in general and narcotics crime cases in particular, as has been demonstrated in the United States and other countries. Using the journal Devy Iryanthy Hasibuan as evidence, Austin Lovegrove argues that the difficulties in overcoming a judge's discretion is a contributing factor to the discrepancy in punishment.¹⁶

The provisions in the Criminal Code that already contain criminal guidelines must be considered by the panel of judges in making a decision, namely the guilt of the criminal perpetrator, the motive and purpose of committing the crime. Whether the crime was carried out in a planned manner, the inner attitude of the criminal maker, and how to commit the crime. In line with the theory expressed by M. Friedman in his book Soerjono Soekanto entitled Introduction to Legal Research (2010) says that a legal system is a single unit composed of 3 elements, namely:

1. *Structure*. The structure is comprised of the complete law enforcement institution and its machinery, which includes the police department with their police officers, the prosecutor's office with their prosecutors, and so on.

¹⁴ Devy Iryanthy Hasibuan. (2015). Disparitas Pemidanaan Terhadap Pelaku Tindak Pidana Narkotika, *USU Law Journal*, Vol.3. No.1, April, hlm. 94.

¹⁵ Bagir Manan, *Kekuasaan Kehakiman Republik Indonesia*, Bandung, LPPM-UNISBA, 1995, hlm. 6.

¹⁶ Devy Iryanthy Hasibuan. (2015). Disparitas Pemidanaan Terhadap Pelaku Tindak Pidana Narkotika, *USU Law Journal*, Vol.3. No.1, April. hlm. 96.

2. *Substance*. All legal concepts, legal norms, and legal rules, whether written and unwritten, as well as excerpts from court decisions, constitute the substance of the law.
3. *Legal Culture*. Legal culture refers to the habits, opinions, methods of thinking, and ways of doing that are cultivated within the legal machinery as well as throughout the wider community. Efforts to establish the rule of law are not only concerned with the rights of state institutions and the distribution of power in accordance with the principle of Check and Balance in the implementation of governance but also with the establishment of the rule of law across the state.

In drug cases, the variables that influence judges' different choices include drug usage, which is on the rise and difficult to eradicate, as well as a lack of resources. As a result, it is motivated by worry over drug usage in Indonesia, which has progressed to the point where it is compromising the life of the nation and national security as a result of its widespread distribution throughout society. However, when adjudicating a criminal case, judges must first go through a number of phases, including receiving, examining and ultimately deciding criminal cases on the basis of the principles of being honest, free, and impartial in accordance with the method prescribed by law.

The problem of criminal inequity that has grown in recent years in law enforcement will almost definitely have inevitable ramifications. Among the consequences of this glaring disparity in criminal punishment, according to Edward M. Kennedy, who was also quoted by Barda Nawawi, are:¹⁷ a) the ability to maintain the growth or development of cynical feelings in society toward the existing criminal justice system; b) the failure to prevent the occurrence of criminal acts; c) the encouragement of the occurrence of criminal acts; and d) the impediment to corrective action against violators.

Criminal disparities exist as a result of the existence of criminal disparities, and this is not in accordance with the aims of criminal law and the spirit of penal philosophy. Uneven distribution of punishment in society is progressively producing disorder, harming people's sense of justice while also enticing them to engage in criminal activity. Eventually, this condition evolved into a sort of failure in criminal law enforcement, in which law enforcement was viewed as something inconsequential by members of the general public.

The problem of inequities in criminal justice in Indonesia cannot be solved by just eliminating discrepancies in law enforcement. What can be done is simply make an effort to reduce the discrepancy in criminal punishment that exists in our society. Muladi's view, which states that the most important effort that must be made in dealing with the problem of criminal disparity is the need for judges' appreciation of the principle of proportionality between the interests of the community, the interests of the state, the interests of the accused perpetrators of crimes, and the interplay of these

¹⁷ Barda Nawawi Arief, 1998. *Beberapa aspek kebijakan penegakan dan pengembangan hukum pidana*, Jakarta: Citra Aditya Bakti. hlm. 8

interests, can be used as a solution. Muladi's view can be used in conjunction with various other views of scholars associated with the philosophy of punishment and the purpose of the law itself.

3. Legal Certainty in the Application of the Crime of Narcotics Abuse Judging from the Disparity of Judges' Decisions

There are three stages in carrying out policy formulation, namely: First, the formulation of a criminal act (criminal act). A criminal act is an act for which the perpetrator may be subject to criminal sanctions or criminal penalties. The perpetrator can be said to be a subject of criminal law. Thus, in the formulation of a crime, there must be an element of a person's actions. The element of a person's actions is basically a person or natural human being who can commit a crime.¹⁸ *Second, the formulation of criminal liability.* Whether or not someone is guilty of a crime depends on whether the act was unlawful and whether or not a perpetrator may be held criminally liable before any conviction can be handed down. There must be a reference to legality and mistake in order to assess criminal acts and responsibilities in a case. *Third, Disciplinary or criminal punishments can be formulated.* The use of high criminal penalties as a means of preventing crime is one method of doing so. Among the elements of the Narcotics Law that can be enforced are the criminal sanctions for narcotics abuse included in Article 127.

Drug traffickers face a range of penalties, depending on their behavior. The following are some examples of offenses for which the death sentence may be imposed under the Narcotics Law. Following are the Supreme Court's legal considerations on cases involving the application of the Narcotics Law's Articles 114 and 112 provisions.

The decision of the Supreme Court of the Republic of Indonesia Number 1071K/Pid.Sus/2012, which states as follows:

- a) While the requirements of Article 112 of Law No. 35 of 2009 must be utilized as a basis for the provisions in Article 114 in some cases, it is important to analyze what constitutes a Defendant's motive or purpose in owning or controlling the drugs before utilizing them.
- b) In contrast, the rules of Article 114 and Article 112 of Law Number 35 of 2009 govern the use of wastebaskets and rubber articles. Under Article 112, narcotics addicts and users will not be able to extricate themselves from the ties that bind them to Article 112. However, this type of thinking is incorrect when it comes to applying the law since it does not take into account the circumstances or things that underlay the defendant's control or possession of the items in accordance with the Defendant's aims or goals;
- c) According to the doctrine on guilt, "there can be no crime without the presence of guilt." Unless a person's guilt has been proven, they cannot be punished. Punishing someone who has no intention of breaking the law is a grave offense.

¹⁸ P. A. F Lamintang, & C. Djisman Samosir, (1993). *Hukum Pidana Indonesia*, Sinar Baru, Bandung.

One of the indictments will be selected and considered immediately by the panel of judges based on facts revealed during the trial, but the panel is more inclined to consider charges of violating Article 127 paragraph (1) letter an of Law Number 35 of 2009 concerning Narcotics, which contains the following elements: For starters, each person's individuality. Narcotics Category I's two non-abusers are not plants in and of themselves. An important aspect of a successful implementation is that it isn't all down to one person's willpower. It's fair to say that this third criterion is what keeps the seller from delivering his narcotics to the buyer when he's trying to sell them.

Article 24 paragraph (1) of the 1945 Constitution guarantees the autonomous and uninfluenced exercise of judicial power for the administration of justice and the upholding of the law and justice system. There are several judicial entities that are independent of the Supreme Court, such as the general court environment, military, and administrative courts as well as a Constitutional Court that administer justice to protect the rule of law and justice in accordance with their respective jurisdictions. "Judicial Power" is defined as "the power of an autonomous state to administer justice to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia" in Article 1 point 1 of Law No. 48 of 2009.

Judicial power is also part of the principles of the rule of law. As Bagir Manan's description shows about the substance of independent judicial power, among others, namely:¹⁹

1. Judiciary or judicial functions include the ability to analyze and decide on a case or dispute, and the ability to issue a legal decision. It is conceivable to meddle with branches of power outside of the judiciary, such as those in charge of overseeing and inspecting cases and making legal decisions..
2. The goal of independent judicial power is to ensure that judges are not subjected to various concerns or fears as a result of a decision or legal determination they make..
3. Independent judicial power aims to ensure that judges act objectively, honestly, and impartially.
4. The supervision of an independent judicial power is carried out solely through legal remedies, ordinary or extraordinary, by and within the jurisdiction of the judiciary itself.
5. All sorts of intervention from beyond the judiciary's authority are prohibited by an independent judicial power.
6. All actions against judges are carried out solely according to the law.

The judge before deciding a case must pay attention to things that are considered legal in order to uphold the truth and realize justice. Based on Article 183 of the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code stipulates that:

¹⁹ Manan, Bagir. (1995). *Kekuasaan Kehakiman Republik Indonesia*, Bandung, LPPM-UNISBA.

"A judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains the conviction that a criminal act has actually occurred and that the defendant is guilty of committing it."

It's possible to think of criminal disparity as a difference in the way a judge decides whether or not to impose different penalties for the same offense. Muladi and Barda Nawawi explain that criminal inequalities include: a) the application of disproportionate punishment to the same crime; b) the application of unequal punishments to crimes of equivalent severity; c) the application of unequal punishment to those who jointly commit a crime.

It is typical for the determination of criminal choices connected to court freedom to be influenced by criminal inequality if the legal reasons are evident. Consequently, it is imperative that every illegal decision takes into account the legal repercussions of the crime.

In the court's decision, the judge gives considerations, namely, one of which is the judge's consideration of the witnesses presented in the trial. In short, confirming the arrest of the accused witnesses. In addition, the judge also considered that in order to impose a sentence on the defendant, it is necessary to first consider the aggravating and mitigating circumstances for the defendant. The aggravating and mitigating factors are:

- a. The Defendant's conduct is in direct opposition to the Government's efforts to curb drugs usage; this is an aggravating circumstance.
- b. Mitigating Circumstances: 1). The defendant has never been convicted; 2). The defendant behaved politely in court; 3). The defendant confessed frankly his actions so as to facilitate the trial; 4). The defendant regrets his actions and will not do it again;

The judge takes into account a variety of factors before making a conclusion on the culprit of the crime committed. As an example, the facts of the case, the legal and non-legal aspects of the crime, and other relevant issues.

D. CONCLUSION

The author draws several conclusions from the discussion above, including the fact that the legal certainty of the application of the criminal act of narcotics abuse, as evidenced by the disparity of judges' decisions on judges' considerations, is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and certainty. law. The independence of judges has an impact on the emergence of discrepancies in sentences. When imposing punishment in this case, the judge must take into consideration the defendant's statement as well as the defendant's motivation for purchasing the narcotics. The absence of sentencing guidelines for court judges in Indonesia is a contributing cause to criminal discrepancies in narcotics crime cases since it prevents them from properly understanding the types of sanctions that are appropriate and desirable in these circumstances. As a result, the mental attitude (*mens rea*/criminal purpose) of the

perpetrators of the crime can be utilized to determine the criterion guidelines that should be used to administer punishment for narcotics criminals. The existence of a criminal act can be established by demonstrating the existence of a causal relationship in the defendant's inner intention between his or her desire/motive and the goal, or by demonstrating the existence of conviction or understanding of what was done and its consequences and the circumstances that led to the act. The majority of them go along with it. However, under the Narcotics Law, the threat of penalty is only dependent on the specifications and quantity of evidence, and the *men rea* of the perpetrators should also be explicitly described so that in the future there is no disparity in the judgments of the judges.

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