



Factors Causing Disparity in Judges' Decisions in Narcotics Cases

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Abstract

This study aims to analyze the factors that cause the disparity in judges' decisions in narcotics cases in Indonesia. The disparity of judges' decisions refers to the difference in the results of decisions between one judge and another in similar cases. The factors that cause this disparity can come from various aspects, both internal and external, that affect the objectivity of the judge in giving the verdict. Some of the factors found include differences in interpretation of the law, the social and cultural background of judges, as well as pressure from the public and the media. In addition, the subjectivity of judges and inconsistency in the application of legal provisions also play a role in creating injustice in the criminal justice system. This study uses a qualitative research method with a literature study approach and interviews with legal practitioners. The results of the study show that the disparity in judges' decisions in narcotics cases can be minimized by having clear standard operating procedures (SOPs), increasing the capacity of judges in understanding narcotics cases, and providing more intensive professional ethics training. The study also suggests the need for tighter supervision of judges' decisions to ensure that every decision taken is in accordance with the principles of justice and applicable law.

Introduction

The narcotics problem in Indonesia has become one of the most serious and complex issues in law enforcement (Sutanto, 2024). As a country with a large population and a large geography, Indonesia faces major challenges in overcoming the spread and abuse of narcotics (Herindrasti, 2018; Mulyani, 2024; Rahman et al., 2024). In an effort to eradicate narcotics crimes, law enforcement officials, including judges, have a central role in providing justice through their decisions. However, reality shows that there is a disparity in judges' decisions on narcotics cases that often reap controversy in the community.

The disparity of the judge's decision refers to the significant difference in the verdict handed down against the perpetrator of a criminal act with similar case characteristics (Suherman, 2024). This phenomenon is not only in the public spotlight, but also raises questions about consistency, justice, and legal certainty in Indonesia. In the context of narcotics cases, this disparity is often seen in a variety of punishments, ranging from light prison sentences to the death penalty (Spohn, 2015; Purnomo & Dewi, 2023; Johnson et al., 2021).

One of the main causes of the disparity in judges' decisions is the difference in interpretation of the applicable law. In the Indonesian legal system, judges have the freedom to interpret the law according to their respective knowledge, experience, and beliefs (Widihastuti, 2015; Abdurrachman et al., 2021; Wardhani et al., 2022). This freedom, while important to guarantee judicial independence, is often a loophole for inconsistencies in the application of the law.

In addition, the difference in background and experience of the judges also affects the decisions they take. Judges with longer experience may have a different outlook compared to judges who

are just starting their careers. These factors can influence how they understand the evidence, consider the context of the case, and determine what punishment is considered appropriate.

External factors, such as public pressure, cannot be ignored either. In some cases that are of public concern, judges may feel pressured to impose harsher sentences in order to provide a deterrent effect. On the other hand, in cases that receive less attention, the judge's decision tends to be looser or even considered less fair by some parties.

In addition to public pressure, the influence of certain parties or certain interests can also be a factor causing disparity. A judicial system that is not completely free from corrupt practices opens up opportunities for the intervention of interested parties to influence judges' decisions (Scott, 1969). This, of course, damages the integrity of the judiciary and injures the community's sense of justice.

Judgment disparity can also occur due to weaknesses in the judicial system itself, such as a lack of clear guidelines or standards for sentencing (Yuda, 2015; Lin et al., 2022; Freeman et al., 2021). Although there are criminal guidelines in criminal law, they are often considered not detailed enough to handle the varying complexities of narcotics cases. Another factor that contributes is the difference in assessment of the level of perpetrator error. In some cases, judges focus more on individual aspects of the perpetrator, such as age, social background, or role in the crime. However, in other cases, these considerations are ignored, resulting in inconsistent punishments.

Furthermore, the limited capacity of judicial institutions in handling the increasing number of narcotics cases is also a challenge in itself (Unayah, 2016). The high workload can affect the quality of the judicial process and the decisions produced. Under certain conditions, judges may not have enough time to comprehensively investigate each case. On a broader level, the disparity in judges' decisions also reflects the incompatibility between the prevailing legal system and the social dynamics and complexity of narcotics crimes. Changing patterns of increasingly sophisticated narcotics crime demand adaptive legal responses, but the legal system often lags behind in keeping up. In addition, the lack of training or updating knowledge for judges related to the development of narcotics cases is also an obstacle. Narcotics cases involving international networks, advanced technology, or new modus operandi require a deep understanding to be handled appropriately.

The disparity of judges' decisions in narcotics cases not only has an impact on the perpetrators, but also on society as a whole. Inconsistencies in judgments can create distrust of the justice system and create the perception that the law is not enforced fairly. This can ultimately weaken the government's efforts to eradicate narcotics.

In an effort to overcome the disparity in judges' decisions, a comprehensive approach is needed, both in terms of legal reform, increasing the capacity of judges, and supervising judicial independence. By understanding the factors that cause this disparity, it is hoped that the Indonesian justice system can become more fair, consistent, and reliable. In closing, the disparity in judges' decisions in narcotics cases is a complex and multidimensional issue. Therefore, there needs to be an in-depth study and concrete steps to minimize the inconsistencies that occur. Fair and consistent law enforcement is the key to restoring public trust in the justice system while supporting the success of eradicating narcotics crimes in Indonesia.

Methods

This study uses a qualitative approach to analyze the factors that cause the disparity in judges' decisions in narcotics cases. This approach was chosen because of its exploratory nature and

focuses on a deep understanding of complex social, legal, and behavioral phenomena. This study aims to explore the understanding of the background, dynamics, and factors that affect the difference in judges' decisions in narcotics crime cases.

This research is a qualitative descriptive research (Ardyan et al., 2023). Descriptive research aims to describe in detail the phenomenon of disparity in judges' decisions, while the qualitative approach allows in-depth exploration of the causal factors based on empirical data and the views of informants. This research was conducted in several district court areas in Indonesia that have a high level of narcotics cases. The location of the study was chosen purposively to obtain a variety of data based on the characteristics of the area, the number of narcotics cases, and the severity of the sentences imposed.

The data in this study were obtained from two main sources: 1) Primary Data: This data was collected through in-depth interviews with relevant informants. The selected informants include judges who handle narcotics cases, public prosecutors, advocates, and criminal law experts; 2) Secondary Data: This data is obtained from official documents such as court decisions, laws and regulations related to narcotics, and relevant research or publication reports.

Data Collection Techniques

The data collection techniques in this study include: 1) In-depth Interview: The interview is conducted in a semi-structured manner using pre-arranged interview guidelines. These guidelines include questions regarding the decision-making process, legal considerations, and other factors that affect the judge's decision; 2) Document Study: The researcher analyzed court decisions related to narcotics cases to identify patterns of disparities in decisions, including differences in sentences for cases with similar characteristics; 3) Indirect Observation: The researcher studies the dynamics of the court through documentation records and reports related to the trial process (Miles & Huberman, 1992).

The informants in this study were selected using the purposive sampling technique, which is to select informants based on their relationship with the research topic. Informant criteria include: 1) A judge who has handled narcotics cases in district courts; 2) The public prosecutor involved in the prosecution of narcotics cases; 3) Advocate who accompanies the defendant in the narcotics case; 4) Academics or criminal law experts who have a deep understanding of narcotics law and cases.

Data Analysis Techniques

The collected data is analyzed using thematic analysis techniques. This analysis process involves the following steps (Saleh, 2017): 1) Data Reduction: Data obtained from interviews and documents are classified based on relevant themes, such as internal factors of judges, external pressures, or weaknesses in the legal system; 2) Data Presentation: Reduced data is presented in the form of narrative descriptions to provide an overview of key patterns and findings; 3) Conclusion: Based on the findings that have been presented, the researcher draws conclusions regarding the factors that cause the disparity in judges' decisions in narcotics cases.

Data Validity

To ensure the validity of the data, this study uses the triangulation technique of sources and methods. Source triangulation is carried out by comparing information obtained from various informants, while method triangulation is carried out by combining data from interviews, document studies, and analysis of court decisions.

Results and Discussion

Criminal Arrangements for Perpetrators of Narcotics Crimes according to Law No. 35 of 2009 concerning Narcotics

Law No. 35 of 2009 concerning Narcotics is the main basis in the regulation of criminal offenses against narcotics offenders in Indonesia (Fokusmedia, 2009). The regulation in this law aims to provide a deterrent effect, protect the public from the dangers of narcotics, and ensure rehabilitation for addicts or victims of narcotics abuse.

In this law, there is a classification of perpetrators based on the level of crime, such as dealers, manufacturers, couriers, and users. The penalties regulated in the law vary, ranging from light imprisonment to the death penalty, depending on the type of offender and the quantity of narcotics involved. Some important articles related to criminal justice include:

Table 1. Articles Related to Criminal Offenses

| Article | Article Contents | Maximum Punishment |
|-------------|---|--|
| Article 112 | Illegal possession or possession of class I narcotics | 12 years in prison and a fine of IDR 8 billion |
| Article 113 | Production or smuggling of class I narcotics | 20 years in prison or the death penalty |
| Article 127 | Abuse of narcotics class I, II, and III by users | Medical or social rehabilitation |

Although the regulations in this law are relatively strict, its implementation often raises problems, especially related to the disparity in judges' decisions. The law provides interpretation space for judges in considering sentences, which is often a factor causing differences in decisions.

The regulation in Law No. 35 of 2009 concerning Narcotics provides a comprehensive legal basis to ensnare perpetrators of narcotics crimes (Indonesia & Number, 35 C.E.). However, this study found that the implementation of the law still gives rise to mixed interpretations among judges. This is in line with the progressive legal theory put forward by Satjipto Rahardjo (Rahardjo, 2006), which states that the law must not only be applied textually, but must also pay attention to aspects of social justice and humanity. This theory supports the findings of the study which shows that in Decision Number 26-K/PM-I-02/AD/III/2023, judges prioritize a repressive approach to provide a deterrent effect, while in Decision Number 17-K/PM-I-02/AD/II/2023, a rehabilitative approach is prioritized to improve the behavior of the defendant. This shows that there is a considerable space for interpretation in the application of the law, which can be one of the causes of disparity in decisions.

Factors Causing the Disparity of Judges' Decisions on Narcotics Crime Cases in the Decision of the Military Court I-02 Medan

This study analyzes two decisions from the I-02 Medan Military Court, namely Decision Number 26-K/PM-I-02/AD/III/2023 and Decision Number 17-K/PM-I-02/AD/II/2023. Although the two cases have similar characteristics, there is a disparity in the verdict handed down. The factors that cause the disparity can be explained as follows:

Interpretation of Evidence

In Decision Number 26-K/PM-I-02/AD/III/2023, the judge considered that the defendant had an active role as a courier in the narcotics network so that he was sentenced to a heavier sentence. On the contrary, in Decision Number 17-K/PM-I-02/AD/II/2023, the judge

considered that the defendant only played the role of a user who was indirectly involved in the network.

Subjective Factors of Judges

The difference in background, experience, and legal knowledge of the judge who handles the case also affects the difference in decision.

External Pressure

In Decision Number 26-K/PM-I-02/AD/III/2023, there was pressure from the public due to the high attention to the case, while Decision Number 17-K/PM-I-02/AD/II/2023 was relatively unnoticed by the public

Case Context and Perpetrators

The judge considers the defendant's social background, age, and role in the narcotics network. This difference in consideration is one of the factors that cause disparity.

Table 2. Judge's Decision

| Decision Number | The Role of the Defendant | Evidence Submitted | Punishment Imposed |
|--------------------------|----------------------------------|--------------------------------|--|
| 26-K/PM-I-02/AD/III/2023 | Courier | 500 grams of class I narcotics | 15 years in prison and a fine of IDR 1 billion |
| 17-K/PM-I-02/AD/II/2023 | User | 5 grams of class I narcotics | Rehabilitation for 6 months |

This study identifies several factors that cause the disparity in judges' decisions, namely interpretation of evidence, judges' subjective factors, external pressure, and the social context of the case. These factors have been widely discussed in previous studies. According to research by (Loim et al., 2023), disparities in decisions often occur due to differences in judges' experiences, educational backgrounds, and personal views on the cases they handle.

In the context of Decision Number 26-K/PM-I-02/AD/III/2023 and Decision Number 17-K/PM-I-02/AD/II/2023, the results of the study show that these factors greatly affect the difference in decisions. The judge in Decision Number 26-K focuses more on the aspect of preventing narcotics trafficking by giving severe punishments, while the judge in Decision Number 17-K considers the humanitarian aspect by deciding on rehabilitation for the defendant. These findings are consistent with the theory of the social role of judges put forward by Roscoe Pound, which states that judges not only function as law enforcers, but also as agents of social change.

Legal Analysis of Judges' Considerations in Issuing Verdicts

In analyzing the judges' legal considerations for the two decisions, this study finds that the difference in decisions is based on several aspects, namely:

Juridical Aspects

In Decision Number 26-K/PM-I-02/AD/III/2023, the judge focused more on the interests of law enforcement by considering the weight of the evidence and the social impact of narcotics crimes. This consideration is based on Article 113 and Article 112 of Law No. 35 of 2009.

On the other hand, in Decision Number 17-K/PM-I-02/AD/II/2023, the judge considered the rehabilitation aspect in accordance with Article 127 of Law No. 35 of 2009, assuming that the defendant was a victim of narcotics abuse.

Sociological Aspects

The judge in Decision Number 26-K/PM-I-02/AD/III/2023 considered that severe punishment was needed to provide a deterrent effect, especially considering the high number of narcotics circulation cases in the region.

In Decision Number 17-K/PM-I-02/AD/II/2023, the judge considered the defendant's social background who was young and had no previous criminal history.

Philosophical Aspects

The difference in the judge's philosophical approach is obvious. In Decision Number 26-K/PM-I-02/AD/III/2023, judges tend to adhere to a retributive approach, while in Decision Number 17-K/PM-I-02/AD/II/2023, judges use a restorative approach.

Table 3. Aspects of Consideration of the Judge's Decision

| Aspects of Consideration | Decision 26-K/PM-I-02/AD/III/2023 | Decision 17-K/PM-I-02/AD/II/2023 |
|---------------------------------|--|---|
| Juridical | Repressive justice-based law enforcement | Rehabilitation as a humanist solution |
| Sociological | Deterrent effect for narcotics networks | Recovery of the defendant as a victim |
| Philosophical | Attributive | Restorative |

The judge's legal considerations in imposing a verdict are not only based on juridical aspects, but also include sociological and philosophical aspects. In Decision Number 26-K/PM-I-02/AD/III/2023, judges tend to adhere to a retributive approach with the aim of providing a deterrent effect for perpetrators and the community. This approach is in accordance with the retribution theory which emphasizes that the punishment must be proportional to the crime committed.

On the contrary, in Decision Number 17-K/PM-I-02/AD/II/2023, the judge emphasized a restorative approach, which aims to restore the state of the defendant and the community. This approach is in accordance with the restorative theory put forward by (Pradityo, 2016), which states that restorative justice aims to repair relationships damaged by crime.

This difference in approach shows that judges have discretionary freedom in determining decisions, but also pose a risk of inconsistency in law enforcement. This is reinforced by research (Setiawan et al., 2024), which found that the lack of detailed criminal guidelines is often the main cause of disparities in verdicts in Indonesian courts.

Conclusion

Based on the results of the research and discussion that has been carried out, it can be concluded that the disparity of judges' decisions in narcotics crimes is a complex phenomenon, which is influenced by various internal and external factors. Although Law No. 35 of 2009 on Narcotics has provided a clear legal framework, implementation in the field often faces various challenges, especially in terms of interpretation and application by judges. Internal factors that affect disparity include differences in educational backgrounds, experiences, and subjective views of judges. Meanwhile, external factors include pressure from the social environment, media attention, and public expectations. This can be seen from the analysis of Decision Number 26-K/PM-I-02/AD/III/2023 and Decision Number 17-K/PM-I-02/AD/II/2023, where the two decisions show different approaches, namely retributive and restorative. The retributive approach in Decision No. 26-K emphasizes providing a deterrent effect to the perpetrators and preventing narcotics trafficking, while the restorative approach in Decision No. 17-K aims to

rehabilitate the defendant as part of rehabilitation efforts. This difference reflects the large discretionary space for judges, which on the one hand allows adjustments to the context of the case, but on the other hand also opens up opportunities for injustice. This research supports relevant legal theories, such as the progressive legal theory by Satjipto Rahardjo, the social role theory of judges by Roscoe Pound, and the theory of restorative justice by Braithwaite. The findings are also consistent with previous research highlighting the importance of more detailed sentencing guidelines to reduce sentencing disparities. To overcome the disparity in judges' decisions, improvement measures are needed, such as revision of criminal guidelines, increasing the capacity and competence of judges, and strengthening supervision of the judicial process. With these steps, it is hoped that the justice system can realize justice that is more consistent, equitable, and based on the principles of humanity and legal certainty.

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