

## Decision Disparity in Narcotics Abuse

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### Abstract

This study aims to determine the factors that cause the disparity of decisions in narcotics abuse, as well as how to overcome it. The development of narcotics abuse and trafficking that has hit the world has also affected the country, its development is so rapid that it is very worrying. Indonesia's vast territory and consists of 17 thousand islands in addition to Indonesia's large population of around 250 million, for the narcotics market is an extraordinarily promising market. this is what attracts foreign narcotics mafia to invade Indonesia in various ways. the type of data is primary data and secondary data, primary data obtained through direct interviews with competent respondents. Secondary data is obtained through literature from various books, legal rules, documents, and other written data that are considered related to this research. The results showed that 1) Factors that cause disparity include subjective factors in making decisions as well as aggravating and mitigating factors; 2) Efforts to overcome the disparity in narcotics abuse decisions are to conduct personality development training, in order to be able to demonstrate professionalism and integrity to pay attention to the case at hand, so as to be able to make policies that provide a sense of justice for every community.

**Keywords:** decision, disparity, narcotics, abuse, Indonesia

### 1. Introduction

The development of narcotics abuse and trafficking that has hit the world has also affected the country; its development is so rapid that it is very worrying. Indonesia's vast territory, consisting of 17,000 islands and a large Indonesian population of around 250 million, is an extremely promising narcotics market. This attracts the foreign narcotics mafia to invade Indonesia in various ways (Irmawan & Mashdurohatun, 2018).

Thousands of scattered islands owned by Indonesia are utilized as strategic entry points for the narcotics mafia to enter illicit goods into Indonesian territory. As a result, narcotics have not only hit the capital or big cities but have also spread to rural areas and have sacrificed thousands and even millions of lives of the nation's children due to drug abuse cases. Narcotics have penetrated all levels of Indonesian society. The targets are not only nightpots but have penetrated residential areas, universities, schools, boarding houses, and even the household environment (Purnomo & Dewi, 2023).

Victims of narcotics abuse in Indonesia are increasing and are not limited to wealthy groups of society, given the relatively high price, but have also penetrated low-income communities. This can happen because Narcotics have many types, from the most expensive to the cheapest. Observing the development of narcotics abuse and trafficking lately, it has reached an alarming situation, becoming an urgent state problem. Because narcotics abuse is not only among adult students but also among high school students and elementary school students (Singhal et al., 2016). Because adolescents are a group that is vulnerable to narcotics abuse, in addition to having a dynamic, energetic nature, adolescents also have an inquisitive nature. This is what causes them to fall into the problem of drug abuse easily.

The rise of narcotics abuse cases is an important task, so the security forces must work hard to overcome it; court judges must try to enforce the Narcotics Law by applying the law following the applicable law. In Law Number 35 of 2009 concerning Narcotics, it is clearly stated that the criminal sanctions given to perpetrators of narcotics abuse are very severe, namely a minimum imprisonment of 1 (one) year up to 20 (twenty) years imprisonment or life imprisonment and can even be punished with the death penalty (Dewi Anggraeny, n.d.).

In connection with the above, an authorized institution is needed to impose criminal sanctions on someone who violates the provisions of Law Number 35 of 2009 concerning narcotics abuse, one of which is the judiciary. The Supreme Court and the judicial bodies under it implement judicial power in the general court, religious court, military court, and state administrative court (Hidayatulloh et al., 2023).

The District Court is tasked with examining, deciding, and resolving criminal or civil cases at the first level. In carrying out their duties, judges, as an independent power and must be free from all interference from any party, can calmly give the fairest possible decision (Setiawan & Bawono, 2020). This is following the formulation of Article 1 of Law Number 48 of 2009 concerning the principles of judicial power, which states that "Judicial power is an independent state power to administer justice to uphold law and justice based on Pancasila, for the implementation of a state of law and justice." So that in carrying out their duties, judges, as an independent power, must be free from all interference from any party so that judges can calmly provide the fairest possible decision.

Disparity in the imposition of criminal sanctions will have a negative impact if it is related to correction administration. Convicts who have compared punishments then feel victims of the judicial caprice will become convicts who do not respect the law, even though respect for the law is one of the targets of punishment (Hartley et al., 2011; Sinambela, 2020). The striking disparity in the imposition of criminal sanctions against the perpetrators of criminal acts, in addition to causing injustice in the eyes of the perpetrators of criminal acts in particular and the community in general, will also cause dissatisfaction among the perpetrators of criminal acts themselves and the community.

This situation will negatively impact legal certainty and public confidence in the law and judicial institutions. This situation will have a very bad impact on legal certainty and public confidence in the law and the judiciary, especially if the criminal disparity occurs in cases that receive public attention, such as cases of narcotics abuse (Suhendar et al., 2022).

## **2. Method**

The research will be conducted in Bone Regency with the research site at the District Court Office Klas I A Watampone. The reason for the selection of this location is due to the fact that in this place the decision regarding narcotics abuse cases is issued, besides that the author is domiciled in Bone Regency so that it will facilitate data collection. In researching a scientific work, a systematic approach is needed so that there is no bias towards the research problem. In this research, the author uses a case approach method in an effort to describe the factors that cause the disparity of judges' decisions in narcotics abuse crimes in the District Court Klas I A Watampone and efforts that can be made to overcome the disparity of judges' decisions in narcotics abuse crimes in the District Court Klas I A Watampone.

This research is descriptive research, namely research that is to find out and describe the factors that cause the disparity of judges' decisions in the crime of narcotics abuse in the District Court Klas I A Watampone and efforts that can be made to overcome the disparity of judges' decisions in the crime of narcotics abuse in the District Court Klas I A Watampone.

To process the data obtained in this research, the author uses a qualitative data analysis method which is then described descriptively which aims to describe the factors that cause the emergence of criminal disparities in the verdict of narcotics abuse offenses in the District Court Klas I A Watampone and

efforts that can be made to minimize the emergence of criminal disparities in the verdict of narcotics abuse offenses in the District Court Klas I A Watampone.

### **3. Result and Discussion**

#### **Factors causing disparities in drug abuse**

In the judicial environment, the position and function of judges play a very important role in the creation of a fair judicial process that fulfills a sense of justice in the community. The role of the judge becomes so important because the judge is the last support of a judicial process for the community (Hartley et al., 2010; Romdoni et al., 2023). In administering justice, judges have the duty to uphold the law, which means that judges in prosecuting a case must always be guided by the prevailing laws and regulations, in other words, judges must always uphold the law without violating the law itself.

One example of the disparity in judges' decisions in the crime of narcotics abuse in Bone Regency is Decision No. 118/ Pid.sus/2015/PN.WTP which sentenced the defendant Sudarmin alias Amming bin Siddike, residing in Anabbanua, Wajo District, who was charged with the crime of selling and distributing class I narcotics as regulated in Article 114 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The defendant was charged with 8 (eight) years imprisonment by the public prosecutor and sentenced by the judge to 6 (six) years imprisonment, while his friend Makkasau Bin Kassi, in a separate case file Number 119 / Pid.sus / 2015 / Pn.WTP. the defendant Makkasau was charged with 9 (nine) years imprisonment by the public prosecutor, then sentenced to 7 (seven) years imprisonment.

From the court decisions mentioned above, it is clear that there is a disparity in judges' decisions in drug abuse crimes in Bone Regency, Sudarmin Bin Siddike was sentenced to 6 years in prison while his friend, Makkasau Bin Kassi was sentenced to 7 years in prison in the same case. Decisions like this can trigger disappointment in the community because they consider the judge's decision unfair (Burgess et al., 2008).

Thus, it is necessary to study what causes the disparity in judges' decisions in drug abuse crimes in the District Court Klas I A Watampone so that the public is able to think logically to accept any decision handed down by the judge.

Basically, a judge's decision is a reflection of the performance of a judge. Through the decisions he makes, the performance of a judge can be assessed and evaluated. Personality is the basis of a person's behavior in society or the surrounding environment. Personality is a characteristic of an individual's character that is essential and reflected in one's attitude that distinguishes him from other people. Age affects the level of maturity of the judge in making a decision in a case. Men and women are very different in the way they think, act or respond. Women are more emotionally driven and tend to take things personally, whereas men are more logical and tend not to take things personally (Prasetya et al., 2022).

Regarding the decision must consider matters that aggravate or mitigate the defendant, is a fact that must be clearly described in accordance with what is found in the examination of the court session, must be clearly revealed in the description of the consideration of the decision (Bonham, 2001; Kahn & Hansen, 2017). Because the basis used as the starting point for determining the severity of the criminal penalty to be imposed on the defendant, cannot be separated from the facts and circumstances that aggravate or mitigate.

Judges will continue to work and try to realize justice even though the case at hand has no law. When finding a case where there is no law, the judge tries to explore and find the law by relying on the values that live in society. This must be done because it is an obligation (Haryanto et al., 2021).

The judge in examining the case ends with a verdict. A court decision or what is commonly referred to as a judge's decision is needed to resolve a criminal case (Adriel et al., 2023; Hartley et al., 2021; Ulmer

et al., 2011). With the judge's decision, it is hoped that the parties to the case, especially the defendant, can obtain legal certainty about their status as well as prepare the next steps, including accepting the decision, making legal appeals, cassation, clemency and so on.

In addition to the factors expressed above, external factors also play an important role. External factors that make judges free to impose punishment stem from the provisions of Article 24 paragraph (1) of the 1945 Constitution which provides a legal basis for the power of judges where the judicial power is an independent power to administer justice in order to uphold law and justice. This provision has guaranteed the freedom of the judiciary as an independent institution, including the freedom of judges in carrying out their duties. Judges are free to choose the type of punishment, because there are types of punishment available in the criminal law. This can be seen in Article 12 paragraph (2) of the Criminal Code, which states that the shortest period of imprisonment is 1 (one) day and the longest is 15 (fifteen) years consecutively. Meanwhile, paragraph (4) stipulates that imprisonment for a certain period of time may not exceed twenty years. Similarly, in Article 18 paragraph 1 of the KUHP, it is stated that light imprisonment may be imposed for a minimum of one day and a maximum of one year, while in Article 18 paragraph 3 of the KUHP it is stipulated that one-time light imprisonment may not exceed one year and four months. Article 30 of the Criminal Code stipulates that the minimum fine is three rupiahs and seventy cents. If the fine is not paid, it shall be substituted with light imprisonment and the duration of the light imprisonment in lieu of fine shall be at least one day and at most six months.

#### **Efforts to overcome disparities in drug abuse**

The crime of drug abuse with its various forms of offenses has recently become more prevalent and even more worrying about its side effects on the development of our younger generation. With strict implementation by the state apparatus, which includes the judiciary as the last bastion of justice, it is hoped that the decision-making process and its results will fulfill the aspirations of the community and fulfill the sense of justice in it (Liang et al., 2009).

The purpose of the judiciary, which is to uphold law and order through the judiciary, will be jeopardized if there are significant differences in practice between decisions or criminal institutions where the value of the act can be compared.

The respect of the community if the defendant feels that he/she is the victim of a biased judiciary will encourage the defendant and the community who are less familiar with the legal process to increasingly distrust the law as a counterweight and arbiter of problems that occur in their daily lives (Singhal et al., 2016; Tafe, 1993). This is a reflection that with so many criminal disparities, without an explanation to the public about the court process and the background that accompanies it, it will have a bad effect on law enforcement in Indonesia.

Efforts to overcome the disparity in judges' decisions in drug abuse crimes are to conduct personality development training for judges so that they are able to demonstrate their professionalism and integrity to pay attention to the case at hand so that judges are able to make permanent legal decisions that are truly able to provide a sense of justice for the community (Dewi Anggraeny, n.d.; Hidayatulloh et al., 2023). The personal morality of judges plays a very important role in adjudicating a case, so it is argued that the founding fathers of our country were fully aware of the important role of morality or spirit in supporting the implementation of a good state.

#### **4. Conclusion**

Based on the results of research and discussion of the disparity of judges' decisions in drug abuse crimes, it can be concluded that the research results are as follows: 1) Factors that cause criminal disparity include the subjectivity of judges in imposing punishment as well as aggravating and mitigating factors for the defendant. 2) Efforts to overcome the disparity of judges' decisions in the criminal act of narcotics abuse in the District Court Class I A Watampone is to conduct personality development

training for judges to be able to show their professionalism and integrity to pay attention to the case at hand so that judges are able to make permanent legal decisions that are truly able to provide a sense of justice for the community.

In the last part of the thesis, the author will provide some suggestions which are a contribution of thought and may be useful and beneficial to all parties, these suggestions are: 1) to reduce the disparity of criminal sanctions, especially in the application of judges' decisions in cases of criminal acts of narcotics abuse, the first thing that needs to be addressed is the law. 2) To reduce the impact caused by the disparity of criminal sanctions in the verdict of the law on criminal acts of drug abuse, the judge must be able to provide a sense of justice, both for the convicted person and for the community by giving a verdict based on the objectivity of the judge and must be accountable. 3) District Court Klas I A Watampone as a judicial institution must provide guidance to judges on a regular basis regarding decision-making techniques in criminal acts of narcotics abuse.

## References

- Adriel, K., Winata, T., Rossellini, R. A. S., & Neltje, J. (2023). The Legal Politics of Regulating Indigenous Peoples. *Rechtsnormen Journal of Law*, 1(1), 9–14.
- Bonham, V. L. (2001). Race, ethnicity, and pain treatment: Striving to understand the causes and solutions to the disparities in pain treatment. *Journal of Law, Medicine & Ethics*, 29(1), 52–68.
- Burgess, D. J., Crowley-Matoka, M., Phelan, S., Dovidio, J. F., Kerns, R., Roth, C., Saha, S., & van Ryn, M. (2008). Patient race and physicians' decisions to prescribe opioids for chronic low back pain. *Social Science & Medicine*, 67(11), 1852–1860.
- Dewi Anggraeny, K. (n.d.). Disparities In The Judge's Decision On Narcotic Crime. *European Proceedings of Social and Behavioural Sciences*, 52.
- Hartley, R. D., Kwak, D.-H., Park, M., & Lee, M.-S. (2010). *International Journal of Offender*.
- Hartley, R. D., Kwak, D.-H., Park, M., & Lee, M.-S. (2011). Exploring sex disparity in sentencing outcomes: A focus on narcotics offenders in South Korea. *International Journal of Offender Therapy and Comparative Criminology*, 55(2), 268–286.
- Hartley, R. D., Testa, A., & Martinez, E. (2021). Race, ethnicity, and punishment for federal sex offenses: Changing composition in child pornography and sex abuse cases and temporal disparity in sentencing over time. *Sexual Abuse*, 33(8), 891–922.
- Haryanto, I. K., Sudarsono, S., Sugiri, B., & Budiono, A. R. (2021). Ratio legis of special minimum limit regulation in narcotics law. *International Journal of Research in Business and Social Science* (2147-4478), 10(7), 423–431.
- Hidayatulloh, A., Guilin, X., Jiao, D., & Wang, Y. (2023). Analysis of Judgment Conditions in Making a Decision for Rehabilitation of Persons of Criminal Actions Based on Narcotics ABUSE Decision Number: 302/PID. SUS/2022/PN. TJK and Decision Number 217/PID. SUS/2022/PN. KLA. *Rechtsnormen Journal of Law*, 1(1), 42–47.
- Irmawan, D. D., & Mashdurohatun, A. (2018). Disparities Criminal Case Against Judge's Decision In Crime Of Narcotics Abuse Viewed From The Purpose Of Criminal Law. *Jurnal Daulat Hukum*, 1(4), 973–980.



- Kahn, N. E., & Hansen, M. E. (2017). Measuring racial disparities in foster care placement: A case study of Texas. *Children and Youth Services Review*, 76, 213–226.
- Liang, B., Lu, H., & Taylor, M. (2009). Female drug abusers, narcotics offenders, and legal punishment in China. *Journal of Criminal Justice*, 37(2), 133–141.
- Prasetya, M. D., Sari, I. P., Said, S., & Akbar, A. (2022). Forms and Developments of Narcotics Crime During the Covid-19 Pandemic: A Case Study of Court Decision. *SIGn Jurnal Hukum*, 4(2), 291–307.
- Purnomo, V. D., & Dewi, A. (2023). Review of the Disparity of Judges' Decisions in Cases Narcotics Abuse. *Indonesian Journal of Economic & Management Sciences*, 1(3), 227–242.
- Romdoni, M., Fathullah, F., Fatma, M., & Darwis, Z. (2023). Inconsistency in judges' legal considerations addressing special narcotics crimes. *The International Journal of Politics and Sociology Research*, 11(1), 188–194.
- Setiawan, D. W., & Bawono, B. T. (2020). Disparity of Judge's Decision on Children Of Narcotics Crime Actors Study on Denpasar State Court Decision No. 3/Pid. Sus. Anak/2014/PN. Dps. by Denpasar State Court Decision No. 14/Pid. Sus. Anak/2015/PN. Dps. *Jurnal Daulat Hukum*, 2(4), 579–584.
- Sinambela, Y. P. (2020). Disparity of death penalthy decision against people criminal acts of dark circular narcotics. *Asian Social Science and Humanities Research Journal (ASHREJ)*, 2(1), 9–19.
- Singhal, A., Tien, Y.-Y., & Hsia, R. Y. (2016). Racial-ethnic disparities in opioid prescriptions at emergency department visits for conditions commonly associated with prescription drug abuse. *PloS One*, 11(8), e0159224.
- Suhendar, S., Rezki, A., & Yunus, N. R. (2022). Legal Certainty in the Application of the Crime of Narcotics Abuse Judging from the Disparity of Judges' Decisions. *SALAM: Jurnal Sosial Dan Budaya Syar-i*, 9(1), 121–132.
- Tafe, E. J. (1993). Sentencing Drug Offenders in Federal Courts: Disparity and Disharmony. *USFL Rev.*, 28, 369.
- Ulmer, J., Light, M. T., & Kramer, J. (2011). The “liberation” of federal judges' discretion in the wake of the Booker/Fanfan decision: Is there increased disparity and divergence between courts? *Justice Quarterly*, 28(6), 799–837.