

***DISPARITY OF JUDGEMENTS TOWARD DRUG-RELATED CRIME***  
***(STUDY OF DECISION NUMBER 47/PID.SUS/2024/PN TBT AND***  
***DECISION NUMBER 48/PID.SUS/2024/PN TBT)***

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**ABSTRAK**

Tindak pidana Narkotika di Indonesia sudah banyak menimbulkan korban, terutama di kalangan generasi muda bangsa yang sangat membahayakan kehidupan masyarakat, bangsa, dan negara. Dalam penegakan hukum pidana terhadap tindak pidana narkotika menjadi perhatian sehubungan dengan maraknya disparitas pemidanaan. Putusan pengadilan Perkara Nomor 47/Pid.Sus/2024/PN.Tbt dan Perkara Nomor 48/Pid.Sus/2024/PN. Tbt menjatuhkan pidana dengan perbedaan yang sangat jauh, sehingga pertimbangan dan implikasinya perlu dikaji secara mendalam. Hasil dari penelitian ini menunjukkan bahwa tidak ada aturan hukum yang melarang terjadinya disparitas pemidanaan. Terjadinya disparitas pemidanaan terhadap tindak pidana narkotika dalam putusan tindak pidana narkotika Perkara Nomor 47/Pid.Sus/2024/PN.Tbt dan Perkara Nomor 48/Pid.Sus/2024/PN. Tbt merujuk pada adanya asas kebebasan hakim dalam menjalankan fungsi kekuasaan kehakiman. Pertimbangan hakim dalam putusan tindak pidana narkotika Perkara Nomor 47/Pid.Sus/2024/PN.Tbt dengan terdakwa Jefri dan Perkara Nomor 48/Pid.Sus/2024/PN. Tbt dengan terdakwa Supriadi adalah suatu kesatuan yang terintegral dan tidak dapat dipisah, namun terdapat kekeliruan dalam pertimbangan hakim sehingga menjatuhkan pidana dengan perbedaan yang sangat jauh. Implikasi terjadinya disparitas pemidanaan pada kedua putusan tersebut yaitu terjadi ketidakadilan, ketidakpastian dan ketidakmanfaatan dalam penegakan hukum terhadap tindak pidana narkotika.

**Kata Kunci: Disparitas, Putusan, Tindak Pidana Narkotika**

**ABSTRACT**

Narcotics crimes have caused many victims, especially among the young generation of the nation, which is very dangerous for the lives of society, the nation, and the state. In enforcing criminal law against narcotics crimes, it is a concern in connection with the rampant disparity in sentencing. The court decisions in Case Number 47/Pid.Sus/2024/PN.Tbt and 48/Pid.Sus/2024/PN. Tbt

imposed sentences with very different differences, so that the considerations and implications need to be studied in depth. The results of this study indicate that there is no legal regulation that prohibits disparity in sentencing. The occurrence of disparity in sentencing for narcotics crimes in the verdict of narcotics crimes Case Number 47/Pid.Sus/2024/PN.Tbt and Case Number 48/Pid.Sus/2024/PN.Tbt refers to the principle of judges' freedom in carrying out their judicial functions. The judge's considerations in the verdict of narcotics crimes Case Number 47/Pid.Sus/2024/PN.Tbt with defendant Jefri and Case Number 48/Pid.Sus/2024/PN.Tbt with defendant Supriadi are an integral and inseparable unit, but there was an error in the judge's considerations so that the sentences were imposed with very different differences. The implications of the disparity in sentencing in the two decisions are that there is injustice, uncertainty and uselessness in law enforcement against narcotics crimes.

**Keywords:** *Disparity, Decision, Narcotics Crime*

## **A. Introduction**

Drug trafficking today is very worrying condition and situatuin. Children, who are the next generation, as the determinants of the nation's progress, are involved in drug crimes. Children are not only abusers but also couriers in the drug trade.<sup>1</sup> The problem of narcotics (narcotics, psychotropics, and other addictive substances) is one of the particular crimes that occur nationally and internationally because its impact hurts the lives of society, the nation, and the state. The forms of narcotics crimes that are commonly known include the following: 1) Abuse exceeding the dose; 2) Distribution of narcotics; and 3) They are buying and selling narcotics. These three forms of narcotics crimes are one of the causes of various forms of criminal acts and crimes, which directly cause demoralization of society, the younger generation, and especially for the users of the substance themselves, such as murder, theft, mugging, snatching, fraud and fraud. The role of law, in this case, is to combat crime through criminal law policies, and it is one of the efforts of law enforcement about the problem referred to as narcotics. Criminal law policies play a role in positioning drug addicts as victims, not perpetrators of crime.<sup>2</sup>

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<sup>1</sup> Citra Ramadhan, Marlina and Isnaini, *Pencegahan Terjadinya Tindak Pidana Narkotika pada Anak di Kelurahan Bantan Timur*, Journal of Education, Humaniora and Social Sciences, Vol.2, No.3 (2020).

<sup>2</sup> Arie Kartika, *Aplikasi Kebijakan Hukum Pidana terhadap Pelaksanaan Rehabilitasi Pecandu dalam Tindak Pidana Narkotika (Studi di Rehabilitasi Kementerian Sosial Pamardi Putra 'Insyaf' Sumatera Utara)*, USU Law Journal, Vol.3, No.1 (April 2015).

The purpose of the law is to regulate peaceful social interaction. Peace among humans is maintained by law by protecting specific human interests, honor, freedom, life, property, and so on from those who harm them.<sup>3</sup> Providing anti-drug literacy is very important to children today, according to Arianto et al., (2023) children are the nation's next generation and the successors of the existing development struggle. Children are a mandate as well as a gift from God Almighty that we must always protect because in them are inherent dignity, dignity and rights as human beings that must be upheld.<sup>4</sup>

Drug crimes in Indonesia until today continue to be a problem, and it is difficult to determine the most appropriate way to eradicate these crimes. Each of the stakeholders of this nation knows the dangers of drug abuse. The most urgent thing that drug crimes must be eradicated maximally is the abuse and illicit trafficking of narcotics, which can cause more significant danger to the lives and cultural values of the nation, which will ultimately weaken national resilience. Law No. 35 of 2009 concerning Narcotics as the primary regulation in eradicating narcotics crimes is not much different from other legal regulations, namely aiming to protect society.<sup>5</sup> Narcotics crimes regulated in Law No. 35 of 2009 concerning Narcotics are crimes of narcotics abuse class I, class II, and class III, as well as crimes of users to crimes of distributors and users, including narcotics couriers and so on, where these are regulated starting from Article 111 to Article 148 of Law No. 35 of 2009 concerning Narcotics.

The problem of eradicating narcotics crimes has various issues, one of which is regarding the Disparity in sentencing for narcotics cases. Disparity in sentencing is the difference in sentencing for cases with similar characteristics. Disparity in sentencing can occur in several categories, namely<sup>6</sup>: disparity between the same crime, disparity between crimes that have the same level of seriousness, disparity in sentences imposed by one panel of judges, and disparity between sentences imposed by different panels of judges for the same crime.

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<sup>3</sup> Julimaster Saragih, Marlina dan Muaz Zul, *Penyidikan terhadap Tindak Pidana Penyalahgunaan Izin Lokasi*, Arbiter, Vol.1, No.1 (2019).

<sup>4</sup> Arianto dkk., *Perlindungan Hukum terhadap Anak Korban Tindak Pidana Pelecehan Seksual (Studi di Kepolisian Resor Subulussalam)*, Jurnal Meta Hukum, Vol.2, No.3 (2023).

<sup>5</sup> Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, Refika Aditama, Bandung, 2011.

<sup>6</sup> Tata Wijayanta dan Sandra Dini Febri Aristya, *Disparitas Putusan Perkara Sengketa Tanah Terkait Penerapan Hukum Formil*, Yudisial, Vol.7, No.2 (2014).

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Criminal disparities cause problems in law enforcement, where criminal disparities are a form of judges' discretion in sentencing. Still, on the other hand, criminal disparities cause dissatisfaction among perpetrators, their families, and the community; social jealousy and wrong perceptions of the legal system emerge as an apathetic attitude towards law enforcement<sup>7</sup>. One of the disparities in sentencing in narcotics crime cases that is interesting to study and apply is Case Number 47/Pid.Sus/2024/PN.Tbt dan Perkara Nomor 48/Pid.Sus/2024/PN. Tbt.

In case number 47/Pid.Sus/2024/PN.Tbt, the Panel of Judges at the Tebing Tinggi District Court has handed down a verdict against the defendant JEPRI, who has been proven legally and convincingly guilty of committing the crime of "Evil conspiracy to sell Class I Narcotics in non-plant form weighing more than 5 (five) grams," as in the primary indictment of the public prosecutor with Article 114 paragraph (2) Juncto Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Therefore, the judge sentenced him to 12 (twelve) years in prison and a fine of IDR. 1,000,000,000 subsidiary to 3 (three) months in jail.

Next, Decision Number 48/Pid.Sus/2024/PN.Tbt, the Panel of Judges at the Tebing Tinggi District Court has issued a verdict against the defendant Supriadi (UGEN), who has been proven legally and convincingly guilty of committing the crime of "Evil conspiracy to sell Class I Narcotics in non-plant form weighing more than 5 grams", as in the primary indictment of the public prosecutor with Article 114 Paragraph (2) Jo. Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, therefore the judge sentenced him to 3 years in prison. The occurrence of such a significant difference in the imposition of criminal sentences on defendant Jepri (in case number: 47/Pid.Sus/2024/PN.Tbt) and defendant Supriadi (in case number: 48/Pid.Sus/2024/PN.Tbt), is an indication and at the same time a manifestation of the failure of the criminal justice system, one of the goals of which is to create equal justice in a state of law. Moreover, the disparity in criminal penalties that have reached the point of implication, as mentioned above, can also weaken public trust in the criminal justice system.<sup>8</sup>

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<sup>7</sup> Barda Arief Nawawi, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Genta, Yogyakarta, 2010.

<sup>8</sup> Muhammad Rusli Arafat, Sigid Suseno, Widiati Wulandari, *Disparitas Pemidanaan Terhadap Pelaku Perbuatan Jahat Melakukan Tindak Pidana Narkotika dalam Prespektif Tujuan Hukum*, Kosmik Hukum, Vol.23, No.2 (2023).

The same panel made both decisions for the judges. The composition of the Panel of Judges who examined, tried, and decided the case was Cut Carnelia as Chief Judge, Delima Mariaigo Simanjuntak, and Zephania, each as Member Judge. Several factors influence the disparity in judges' decisions, especially in narcotics cases, for example, the provisions of criminal sanctions that only determine the minimum and maximum limits so that judges, based on their subjective freedom, apply sanctions based on considerations of legal facts in court and aggravating and mitigating factors for the defendant. It doesn't stop there, Decision Number 48/Pid.Sus/2024/PN.Tbt also leaves legal issues. The Panel of Judges who sentenced the defendant SUPRIADI alias UGEN to 3 (three) years in prison has deviated from the provisions of the minimum threat stated in Article 114 Paragraph (2) Jo. Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the minimum threat stated in the article is at least 5 (5) years. The legal objective in the form of legal certainty will be the focus of the problem in this decision.

In this case, the perpetrators who worked together committed a narcotics crime as regulated in the Narcotics Law. In the case of a crime, of course, there are elements of an act that can be categorized as having committed a crime accompanied by the perpetrator being able to be punished or the application of a criminal penalty to the crime committed. The existence of problems and issues in the decision on narcotics crimes Case Number 47 / Pid.Sus / 2024 / PN.Tbt and Case Number 48 / Pid.Sus / 2024 / PN. Tbt, as described above, is undoubtedly very interesting to study in a study with the legal theories to be used. Therefore, this research will be compiled in a thesis with the title, "Disparity of Judges' Decisions Against Narcotics Crime Perpetrators (Study of Decision Number 47 / Pid.Sus / 2024 / PN. Tbt and Decision Number 48 / Pid.Sus / 2024 / PN Tbt)."

## **B. Discussion**

### **1. Legal Rules Regarding Disparities in Decisions for Narcotics Crimes**

The Indonesian state has known narcotics since the Dutch colonial era. This can be proven by several regulations in effect during the Dutch colonial era, namely 44 (forty-four) pieces. One of the regulations in force in Indonesia before the enactment of Indonesia's own narcotics law was the *Verdovende Midellen Ordonantie* (stbl 1927 No. 278 to No. 536), or the Narcotics Law, which had been in force since January 1, 1928.<sup>9</sup> Post-independence laws and regulations regarding narcotics in Indonesia have undergone several changes, namely:

- a. The legislation on narcotics in Indonesia after independence has undergone several changes, namely:
- b. On July 26, 1976, it was published in the State Gazette of 1976 Number 37 and Supplement to the State Gazette Number 3086, Law No. 9 of 1976 concerning Narcotics was born.
- c. Law No. 9 of 1976 concerning Narcotics was replaced by Law No. 22 of 1997 concerning Narcotics on September 1, 1997 and published in the State Gazette of 1997 Number 67 and Supplement to the State Gazette Number 3698.
- d. Law No. 22 of 1997 concerning Narcotics was replaced by Law No. 35 of 2009 concerning Narcotics which was enacted and declared effective on October 12, 2009, published in the State Gazette of 2009 Number 143.

### **Judge's Consideration in the Decision of Narcotics Crime Case Number 47/PID.SUS/2024/PN.TBT and 48/PID.SUS/2024/PN. TBT**

Tebing Tinggi District Court Decision No. 47/Pid.Sus/2024/PN.Tbt and No. 48/Pid.Sus/2024/PN. Tbt has examined, tried, and decided on a narcotics crime case by declaring that the defendants Jepri and Supriadi were legally and convincingly proven guilty of conspiracy to sell class I non-plant narcotics weighing more than 5 grams. In sentencing, the judge sentenced the defendant Supriadi to 3 years, but the judge sentenced the defendant Jefri to 12 years. In the Tebing Tinggi District Court Decision No. 47/Pid.Sus/2024/PN.Tbt and No. 48/Pid.Sus/2024/PN. Tbt have similar characteristics including:

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<sup>9</sup> Romli Atmasasmita, *Tindak Pidana Narkotika Transnasional Dalam Sistem Hukum Pidana Indonesia*, Penerbit Citra Aditya Bakti, Jakarta, 1997.

a. Disparity between the same crime;

Tebing Tinggi District Court Decision No.47/Pid.Sus/2024/PN.Tbt and No. 48/Pid.Sus/2024/PN. Tbt is trying the same crime, namely the crime of conspiracy to commit narcotics crimes and is charged with the same Article, namely Article 114 paragraph (1) Juncto Article 132 paragraph (1) of the Narcotics Law or Article 112 paragraph (1) Juncto Article 132 paragraph (1) of the Narcotics Law.

b. Disparity between crimes that have the same level of seriousness;

Tebing Tinggi District Court Decision No.47/Pid.Sus/2024/PN.Tbt and No. 48/Pid.Sus/2024/PN. Tbt is trying the crime of conspiracy to commit narcotics crimes. Narcotics crimes have caused many victims, especially among the young generation of the nation, which is very dangerous for the lives of society, the nation, and the state.

c. Disparity in sentences imposed by one panel of judges;

Tebing Tinggi District Court Decision No. 47 / Pid.Sus / 2024 / PN.Tbt and No. 48 / Pid.Sus / 2024 / PN. The same panel of judges decided on the Tbt panel of judges. The composition of the Panel of Judges who examined, tried, and decided the case was Cut Carnelia as Chief Judge, Delima Mariaigo Simanjuntak, and Zephania, each as Member Judge. This means that there has been a disparity in punishment with several characteristics mentioned above. The comparison related to the punishment can be seen in the table described below:

**Comparison of Sentencing in Tebing Tinggi District Court  
Decision No. 47/Pid.Sus/2024/PN.Tbt and No. 48/Pid.Sus/2024/PN.**

**Tbt**

<b>N o</b>	<b>Name of Defendant</b>	<b>Decision Number</b>	<b>Article of Indictment/ The Charged Person</b>	<b>Proven Article</b>	<b>The Verdict Imposed</b>
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1	Jepri	No.47/Pid. Sus/2024/PN.Tbt	<p><b>Article of Indictment</b></p> <p>Primary, Article 114 paragraph (2) in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics</p> <p>Subsidiary, Article 112 paragraph (2) in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics</p>	<p><b>Primary:</b></p> <p>Article 114 paragraph (2), in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concernin g Narcotics</p>	<p>Imprisonment for 12 (twelve) years and a fine of IDR 1,000,000,000.00 (one billion rupiah)</p>
			<p><b>Articles Claimed</b></p> <p>Primair, Article 114 paragraph (2) in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics</p>		
2	Supriadi or can be called Ugen	No.48/Pid. Sus/2024/PN.Tbt	<p><b>Article of Indictment</b></p> <p>Primary, Article 114 paragraph (2) in</p>	<p><b>Primary:</b></p> <p>Article: 114 paragraph</p>	<p>Imprisonment for 3 (three) years</p>

			conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics  Subsidiary, Article 112 paragraph (2) in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics	(2) in conjunctio n with 132 paragraph (1) of Law Number 35 of 2009 concernin g Narcotics	
			<b>Article Charged</b>  Primair, Article 114 paragraph (2) in conjunction with 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics		

There is a striking difference in the sentencing in both decisions. The sentencing of defendant Supriadi to 3 (three) years as in the Tebing Tinggi District Court Decision No.48/Pid.Sus/2024/PN.Tbt was imposed by considering the Circular of the Supreme Court of the Republic of Indonesia Number 3 of 2015 concerning the Implementation of the Results of the Plenary Meeting of the Supreme Court Chamber Meeting in 2015 as a Guideline for the Implementation of Duties for the Court in one of the legal formulations of the Criminal Chamber in point 1 (one) concerning Narcotics, namely:

“The judge examines and decides the case based on the indictment of the Public Prosecutor (Article 183 paragraph (3) and (4) of the Criminal Procedure Code). The prosecutor charges with Article 114 or Article 112 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, but based on the legal facts revealed in the trial, it was proven that Article 127 number 1 (one) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, which article was not charged. The defendant was proven to be a user in a relatively small amount (Supreme Court of the Republic of Indonesia Circular Letter Number 4 of 2010), then the Panel of Judges decided according to the indictment but could deviate from the special minimum criminal provisions by making sufficient considerations”;

Furthermore, in the considerations, it is stated that based on the provisions above, in this case, the Panel of Judges thinks that a sentence below the exceptional minimum sentence can be applied while still basing the charge on the fulfilment of the formulation of the elements of Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics.

In criticizing the Judge's Considerations, as stated in the decision above, several conditions must be considered for implementing the Surat Edaran Mahkamah Agung (SEMA) 03 of 2015. The conditions include<sup>10</sup>:

- a. The judge stated that the defendant was proven to have committed a crime as referred to in Article 111 of Law Number 35 of 2009 concerning Narcotics (minimum threat of 4 years in prison) or Article 112 of Law Number 35 of 2009 concerning Narcotics (minimum threat of 4 years in jail);
- b. The prosecutor did not charge Article 127 of Law Number 35 of 2009 concerning Narcotics and
- c. Based on the legal facts revealed in court, the defendant was proven to be a narcotics user (Article 127 of Law Number 35 of 2009 concerning Narcotics) with relatively small amounts of narcotics evidence (Surat Edaran Mahkamah Agung (SEMA) 04/2010).

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<sup>10</sup> Matheus Nathanael dkk., *Penelitian Disparitas Pemidanaan dan Kebijakan Penanganan Perkara Tindak Pidana Narkotika di Indonesia*, IJRS, Jakarta, 2023.

The judge was wrong in applying Surat Edaran Mahkamah Agung (SEMA) 03/2015 to Defendant Supriadi as stated in the considerations in the Tebing Tinggi District Court Decision No.48/Pid.Sus/2024/PN.Tbt because the Panel of Judges indicated in its decision that the proven article was Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, where the article did not meet the requirements referred to in Surat Edaran Mahkamah Agung (SEMA) 03/2015. It did not stop there; the Panel of Judges was also wrong in not declaring Defendant Jefri as a drug abuser, as stated in the considerations in the Tebing Tinggi District Court Decision No.47/Pid.Sus/2024/PN.Tbt because the results of the urine test conducted on the defendant Jefri were declared positive for containing methamphetamine. Based on the Criminalistic Laboratory Examination Report No.LAB: 7630/NNF/2023 dated December 5, 2023, by the North Sumatra Regional Police of the Republic of Indonesia, Forensic Laboratory Division.

Judges, in making decisions, should have paid attention to this so that they look for facts that can alleviate the defendant, including material truth, which is the main objective of criminal law. Applying disparity in decisions means that judges use a combined theory of punishment. This theory emphasizes a combination of absolute theory and relative theory. According to this theory, the purpose of punishment, apart from retaliation for the perpetrator, is also intended to protect society by creating order.<sup>11</sup> The purpose of punishment is also stated in the Tebing Tinggi District Court Decision No. 48/Pid.Sus/2024/PN.Tbt, which tried the defendant Supriadi, states that the imposition of punishment is not a form of retaliation but rather a preventive and repressive effort or, more firmly, the sentence imposed is not intended to lower the dignity of the defendant but is educational, constructive and motivating in the hope that the defendant will not repeat his actions in the future after completing the sentence imposed and is prevention for other people.<sup>12</sup>

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<sup>11</sup> Mahfud Mulyadi dan Subakti, *Politik Hukum Pidana terhadap Kejahatan Korporasi*, Sofmedia, Jakarta, 2010.

<sup>12</sup> Putusan Pengadilan Negeri Tebing Tinggi Nomor 48/Pid.Sus/2024/PN.Tbt..

Furthermore, it is also stated that the purpose of criminal punishment is directed towards protecting society from crime and the balance and harmony of life in society by taking into account the interests of society, the state, victims and perpetrators so that criminal punishment must contain elements that are humanitarian, educational and just, therefore according to the Panel of Judges, the punishment that will be imposed on the Defendant as stated in the verdict will later be considered to have fulfilled the sense of justice for the Defendant, especially for society in general.

Different things in the Tebing Tinggi District Court Decision No.47/Pid.Sus/2024/PN.Tbt, which tried the Defendant Jefri. The purpose of the punishment should have been mentioned in the decision. By imposing a prison sentence of 12 (twelve) years and a fine of IDR 1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 (three) months, it shows that the Panel of Judges wants to realize the purpose of punishment which is retaliatory against the defendant. The research of Adhar et al. (2021) stated that Unlawful is an act carried out by a person with permission from the authorized party, namely the Minister, on the recommendation of the Food and Drug Supervisory Agency or other authorized officials based on Law No. 35 of 2009 concerning Narcotics. Still, there is misuse of the permit or outside the intended use of the license granted.<sup>13</sup>

### **Implications of Disparity in Sentencing in Narcotics Crime Cases in Decisions NO.47/PID.SUS/2024/PN.TBT and NO. 48/PID.SUS/2024/PN. TBT Reviewed from the Theory of Legal Purpose**

Every criminal sentence must be carried out by considering the certainty and proportionality of the sentence to realize justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. According to Harkristuti Harkrisnowo, sentence disparity is a form of injustice judges commit to justice seekers. The public will undoubtedly compare judges' decisions in general and find that disparities have occurred in law enforcement in Indonesia. Furthermore, the disparity in sentencing also creates problems for law enforcement in Indonesia.

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<sup>13</sup> Syamsul Adhar, Marlina dan Ibnu Affan, *Penegakan Hukum terhadap Pecandu dan Penyalahguna Narkotika Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika*, Metadata, Vol.3, No.3 (2021).

On the one hand, different sentences/criminal disparities are a form of judges' discretion in making decisions. Still, on the other hand, different sentences/criminal disparities also bring dissatisfaction to convicts and even society in general. This situation certainly causes inconsistency in judicial decisions. Also, it contradicts the concept of the rule of law adopted by a country whose Government is organized based on law and supported by a judicial institution, namely a judicial institution, to enforce the law. The concept of equality before the law, one of the characteristics of a state of law, still needs to be questioned about the reality where criminal disparities are very apparent in law enforcement. This is a form of unequal judicial treatment of fellow perpetrators of similar crimes who are then given different sentences. In this case, there is a decision on sentencing that is strikingly different in the same case with files that are prosecuted separately (splitting), namely that the defendant Jefri in Decision No. 47 / Pid. Sus / 2024 / PN.Tbt was sentenced to 12 (twelve) years in prison, but the defendant Supriadi in Decision No. 48 / Pid. Sus / 2024 / PN.Tbt was sentenced to 3 (three) years. The defendant, Jefri, was sentenced to 12 (twelve) years in prison in Decision No. 47 / Pid. Sus / 2024 / PN. I felt injustice in the law enforcement carried out against him. The Tebing Tinggi District Court Decision No.48/Pid.Sus/2024/PN.Tbt handed down by the judge can be said to be inconsistent with the spirit of the Government in dealing with the country in a state of drug emergency where the Government is currently making serious efforts to prevent and eradicate the abuse and illicit trafficking of narcotics because it has caused many victims, especially among the young generation of the nation, which is very dangerous to the lives of society, the country, and the state.

This means that the Tebing Tinggi District Court Decision No.47/Pid.Sus/2024/PN.Tbt and No. 48/Pid.Sus/2024/PN. Tbt does not provide benefits because the punishment is not in line with efforts to eradicate narcotics, where Indonesia is currently in a state of drug emergency. The disparity in the judge's decision in sentencing between one case and another criminal case is not an unlawful act.

However, there needs to be an understanding from the judges in sentencing so that there is no disparity in sentencing between one case and another case,

that the gap in sentences that occurs is not too far, and that there is no inequality and injustice in law enforcement. The first Sentencing Guidelines issued by the Supreme Court are Supreme Court Regulation (Perma) No. 1 of 2020 concerning Sentencing Guidelines for Article 2 and Article 3 of the Corruption Eradication Law. Implementing these guidelines can minimize disparities that can cause problems. The disparity in sentencing that occurs in drug crime cases often causes problems, so sentencing guidelines are also needed in handling drug crime cases. There are 3 (three) theories of the purpose of sentencing: the theory of retribution, the relative theory, and the combined theory. In Case Number 47/Pid.Sus/2024/PN.Tbt with defendant Jefri, the Panel of Judges used the absolute theory or retaliation theory for sentencing. Meanwhile, Case Number 48/Pid.Sus/2024/PN. Tbt with defendant Supriadi used the relative or objective theory for sentencing.

The existence of the theory of the purpose of punishment in the guidelines for sentencing narcotics crimes is a guide that can make it easier for judges to pass sentences on perpetrators of narcotics crimes. Judges can also make the theory of the purpose of punishment explicit in their considerations so that the public can understand the judge's decision, which is not considered a disparity in the decision but a proportionality of the decision

## **C. Closing**

### **1. Conclusion**

In terms of normative juridical, no legal regulation prohibits disparity in sentencing. The occurrence of disparity in sentencing for narcotics crimes in the verdicts for narcotics crimes in Case Number 47/Pid.Sus/2024/PN.Tbt and Case Number 48/Pid.Sus/2024/PN. Tbt refers to the principle of the Judge's freedom in carrying out the function of judicial power as regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 3 of Law Number 48 of 2009 concerning Judicial Power and Article 32 paragraph (5) of Law Number 3 of 2009 concerning the Supreme Court.

The Judge's considerations in the verdict of the narcotics crime Case Number 47/Pid.Sus/2024/PN.Tbt with the defendant Jefri and Case Number 48/Pid.Sus/2024/PN. Tbt with the defendant, Supriadi is an integral and inseparable unit. The Judge considered the legal facts revealed in the trial that Defendant Supriadi had helped Defendant Jefri to sell crystal methamphetamine. Defendant Jefri then gave some money and crystal methamphetamine for free to Defendant Supriadi to be used together with Defendant Jefri because he had helped sell crystal methamphetamine. In sentencing, the Judge sentenced the defendant Supriadi to 3 (three) years by considering the values of justice stated in Surat Edaran Mahkamah Agung (SEMA) 03 of 2015. Still, the Judge sentenced the defendant, Jefri, to 12 (twelve) years without considering the values of justice stated in SEMA.

The implications of the disparity in the verdicts for narcotics crimes in Case Number 47/Pid.Sus/2024/PN.Tbt and Case Number 48/Pid.Sus/2024/PN. Tbt causes injustice to the defendant, Jefri because there is a striking disparity in sentencing. In addition, the gap in sentencing creates legal uncertainty because the defendant Supriadi was sentenced to 3 (three) years in prison where the imposition of the sentence is under the threat of a particular minimum sanction regulated in Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. Then, the disparity in sentencing does not provide benefits because the sentencing is not in line with efforts to eradicate narcotics where Indonesia is currently in a state of narcotics emergency.

## **2. Suggestion**

Sentencing guidelines are needed for Judges in sentencing narcotics crimes, such as Supreme Court Regulation (Perma) No. 1 of 2020 concerning Sentencing Guidelines for Article 2 and Article 3 of the Corruption Eradication Law. With guidelines for imposing criminal penalties, it will be easier for judges to determine the sentence after the defendant is proven guilty of violating Law Number 35 of 2009 concerning Narcotics so that it does not cause disparities in sentencing.

**Yohana Serevina Mikha Gusta, Marlina dan Yati Sharfina Desiandri**  
*Disparity of Judgements Toward Drug-Related Crime (Study of Decision Number 47/PID.SUS/2024/PN TBT and Decision Number 48/PID.SUS/2024/PN TBT)*

It is hoped that the Panel of Judges who impose sentences in Decision Number 47/Pid.Sus/2024/PN.Tbt and Case Number 48/Pid.Sus/2024/PN.Tbt will consider the narcotics emergency in Indonesia as an aggravating factor for the defendants and, at the same time, consider the theory of retaliation in sentencing defendants who conspired to commit narcotics trafficking crimes.

It is hoped that the Panel of Judges who impose sentences in Decision Number 47/Pid.Sus/2024/PN.Tbt and Case Number 48/Pid.Sus/2024/PN.Tbt, for the future, will use a clear conscience in all aspects of the decision-making process so that a just decision can be created and not produce a very sharp disparity to avoid decisions that appear emotional and transactional.

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