



Legal Considerations in the Disparity of the Judge's Decisions Have Fulfilled a Sense of Justice

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Abstract: The purpose of this research is to know and analyze about the cause of the disparity in judge decisions that occurred in narcotics abuse cases with case number 94/Pid.Sus/2018/PN.Gto and number 138/Pid.Sus/2019/PN.Gto and to find out and analyze whether the sentence imposed by the judge. In this disparity case, it is in accordance with justice or not with normative research methods using a case approach. The technique used is a systematic technique through literature study and using descriptive analysis techniques as a support. The results of the analysis in the resulting research are first in the disparity case number 94/Pid.Sus/2018/PN.Gto and number 138/Pid.Sus/2019/PN.Gto there are factors that influence the judge's decision including legal factors, factors evidence and individual historical factors or trial facts. The two criminal sentences carried out by the judge in this case are considered to be far from justice because the results of the judge's decision are far greater in the second case than the first due to several influencing factors.

Keywords: Disparity; Judge's Decision; Narcotics.

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1. Introduction

Indonesia is the highest agreement of the state's formers, even though it has experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so the recognition of the regions under the auspices of the State of Indonesia is still recognized.¹An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.² Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.³Therefore, in legal politics, a legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.⁴

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.⁵At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution.⁶Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.⁷ The state is firmly obliged to try to fulfill the rights of every citizen.⁸

¹ Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109-121., 110

² Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review*. 3, No. 01 (2021): 55-71., 69

³ Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution." *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791

⁴ Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review*. 1, No. 1 (2019): 68-93., 73

⁵ Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

⁶ Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Straftrecht)," *Jambura Law Review*. 2, No. 1 (2020): 1-29., 3

⁷ Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189-208., 197

⁸ Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review*. 3, No. 02 (2021): 365-77., 375

Diversity is the identity of the Indonesian nation. Starting from ethnicity, race, religion, culture, to customs that unite in one social environment that cannot be simply eliminated. In order to maintain the pluralism that exists in Indonesia, it is necessary to have laws that help and participate in regulating the diversity that exists within society so that there is no overlapping that will lead to divisions. The existence of a set of rules regarding behavior is necessary so that each member of society can know their respective roles, by respecting the rights of others it will go hand in hand with the implementation of the obligations of other members of the community.⁹As a rule of law country, Indonesia upholds the element of justice in every decision making of a case, both in the civil and criminal fields. Judges in Indonesia are required to be professional in each of their decisions. Friedrich Carl Joachim argues that justice can be understood and understood if it is positioned in conditions that can only be realized by law.¹⁰

In a case handled by a judge it is not uncommon for there to be disparities in criminal decisions. This has become something that can happen in every case that occurs in Indonesia, but disparities can also occur in cases in other countries. Disparity according to the Big Indonesian Dictionary (KBBI) has the meaning of difference which in legal terms itself Disparity in judge decision making is a difference in decisions in the same case. In accordance with the understanding in a criminal case with the same type of law violation, it cannot be ruled out that the judge can give a different decision, this happens because there are several legal considerations both in terms of evidence, witness statements and other factors that influence it.¹¹

One of the criminal cases that have disparities in the verdict is Narcotics Crime. Narcotics cases in Indonesia itself cannot be said to be rare. It was recorded in early 2022 according to the Republic of Indonesia's National Narcotics Agency in collaboration with the Republic of Indonesia Police stated that there were around 53,405 suspects in drug cases. 43,804 of them were suspects in narcotics abuse cases with the methamphetamine type, the number of cases of which reached 22,950 cases.

This narcotics abuse crime case does not only ensnare the upper class but all circles. From old, young, poor, rich, children to adults. This is what makes narcotics cases an emergency case that must be eradicated immediately because of course it has a negative effect on the nation and the nation's buds. Consumption of narcotics can leave an addictive effect in the form of a momentary euphoria of pleasure which makes the consumer feel addicted and want to consume narcotics continuously.

In Indonesia, the legal basis for discussing narcotics is regulated in Law no. 35 of 2009, in which there are general provisions, class classification, and the application of sanctions

⁹ Yati Nurhayati, *Pengantar Ilmu Hukum* (Bandung Nusa Media, 2020).

¹⁰ Syarif Mappiasse, *Logika Hukum Pertimbangan Putusan Hakim* (Jakarta : Kencana, 2015).

¹¹ Tri Andirsman, "Hukum Pidana : Asas-Asas Dan Dasar Aturan Umum Hukum Pidana Indonesia" (Universitas Lampung, 2019).

against violators or people who do not obey the law. Article 1 paragraph (1) explains that Narcotics are addictive substances or drugs that have addictive effects made from plants or non-plants, both synthetic and semi-synthetic, which can have an impact on reducing or losing consciousness, reducing and or losing sense of the senses. body, minimizing to eliminating pain, anxiety, and hallucinations that can lead to dependence.¹²

Therefore, the use of illegal drugs such as narcotics that are not in accordance with the recommendations and without the supervision of a doctor will be very fatal for the body. The user will feel continuously not enough with the dose used so that the dose used is increasing day by day which eventually causes various kinds of infections and organ damage which will turn into serious illnesses, from infectious diseases such as bases, blood poisoning to deadly diseases such as AIDS/ Acquired Immuno Deficiency Syndrome or decreased immune system.¹³

In the case of the criminal act of narcotics abuse at the Gorontalo District Court with Case Number 94/Pid.Sus/2018/PN.Gto and Number 138/Pid.Sus/2019/PN.Gto is a case that received a Disparity in Judge's Decision from many other narcotics cases. In the first case, Defendant Sherly Djou SE alias Ely was given a prison sentence of 4 months but did not have to be served and replaced with medical rehabilitation. Whereas in the second case the defendant Hidayat Alibasya alias Dayat was sentenced to 2 (two) years in prison.

The judge's decision ruled that the two defendants had been proven to have violated Article 127 paragraph (1) letter a of Law no. 35 of 2009 concerning abuse of narcotics class I with the type of Methamphetamine for oneself, but in the sentencing of the two cases, different decisions were made. This is because there are factors that also influence the decision handed down so that in this case the second defendant gets a bigger sentence. If you look at the two cases that occurred and compare them with justice, of course the parties to the second case will feel unfair when they know the judge's decision, they will definitely question the credibility of a judge in making a decision. The reason is that the two cases are cases with the same type of law violation but sent differently by a judge. It will certainly raise various kinds of questions from various parties, this is what requires more understanding that must be applied to everyone that the same case can be decided differently and unfairly due to several factors.

Thus, the researcher is interested in conducting research related to Disparity in Decisions of Judges in Criminal Cases of Narcotics Abuse Number 94/Pid.Sus/2018/Pn.Gto and Number 138/Pid.Sus/2019/Pn.Gto (Case Study of Gorontalo District Court).

¹² Winda Hartanto, "Penegakan Hukum Terhadap Narkotika Dan Obat Obatan Terlarang," *Jurnal Legislasi Indonesia* 14, no. 1 (2017).

¹³ Andi Hamzah dan RM Surachman, *Kejahatan Nakortika Dan Psicotropika* (Jakarta Sinar Media, 1994).

2. Method

This type of research is normative research, using an approach statutory approach the author analyzes the laws and regulations. This study uses data analysis techniques with integrative and conceptually tends to be directed to determine, identify, process, and analyze legal materials to understand their significance and relevance.

3. Legal Considerations in the Disparity of the Judge's Decisions Have Fulfilled a Sense of Justice

Case Chronology

In case Number 94/Pid.Sus/2018/PN.Gto it began when the defendant SHERLY DJOU alias Ely on Tuesday 2 January 2018 around 21.30 WITA or at another time in January 2018, located at Jalan Cokroaminoto No. 150, Kelurahan Limba UI Kota Selatan Sub-District, Gorontalo City, or at least in another place that is still included in the jurisdiction of the Gorontalo District Court, which without rights or against the law owns, stores, controls or provides Narcotics Category I non-plants, which is carried out in the following manner:

At the time and place mentioned above, initially the defendant was contacted by the witness Sunaryo via cellphone and invited to meet, when the defendant met the witness Sunaryo immediately gave the package to the defendant by means of witness Sunaryo opening the front door of the car the defendant was riding in and immediately threw the package into the car the defendant was in the front seat near the driver, after the defendant found out that the contents of the package were crystal methamphetamine, the defendant contacted the witness Lely to use them together at the witness Lely's house to be precise at the perspective cafe. At that time the defendant and witness Lely were using it in the bathroom alternately then came witness Syawal and witness Saeng officers from the Gorontalo Province National Narcotics Agency and immediately entered the house owned by witness Lely and broke down the bedroom door after opening it and found witness Lely in the room sitting next to her husband who was sleeping then the witness Syawal broke down the bathroom door and found the defendant in the bathroom holding 1 (one) bottle of modified mineral water (bong) in which a white pipette/straw had been attached to the lid. has been modified and at the tip of the pipette there is 1 (one) clear glass pyrex containing clear crystalline powder left over from methamphetamine which was used by the defendant together with the witness Lely by taking turns went into the bathroom to use the methamphetamine

Whereas after the defendant and witness Lely were secured in the room, the witness Syawal ordered to remove all the items that were in the pockets of the pants the defendant was wearing. Whereas the witness Lely did not find narcotics, but in the trouser pocket worn by the defendant there were items in the form of 1 (one) clear color KIV plastic packet/sachet filled with clear crystalline powder granules suspected of being

methamphetamine-type narcotics, and the defendant admitted that the item was belonged to him, but the defendant stated that the methamphetamine type narcotics were received from OM YO. Furthermore, other Gorontalo BNNP officers conducted a search in the witness Lely's room and found pieces of a white pipette/straw from inside the drawer of the witness Lely's wardrobe.

That there were 2 (two) clear crystal sachets with a first weight of 337.11 mg and a second sachet weighing 46.09 mg based on the results of an examination by the Food and Drug Supervisory Agency in Gorontalo Number: PM.01.05.101.01.18.0112 dated January 8 2018 signed by the head of Balai POM Gorontalo an. Sukriadi Darma, S.Si, Apt is true contains Methamphetamine (shabu) which is included in group 1.

That the defendant did not have permission from the government to own, store, control or provide Narcotics Category 1, not plants, in the form of crystal methamphetamine containing Methamphetamine.

The chronology of the second case is the case with Number 138/Pid.Sus/2019/PN.Gto which began when the Defendant HIDAYAT ALIBASYA Alias DAYAT on Saturday 18 May 2019 around 01.00 WITA or at least sometime in May 2019 or at least -at least at one point in 2019 at Jalan Achmad Najamuddin, Wumialo Village, Kota Tengah District, Gorontalo City or at least in another place that is still included in the jurisdiction of the Gorontalo District Court, without rights or against the law to own, store, control or provide Narcotics Category I are not plants, which were carried out by the Defendant in the following ways:

It started with information from the public received by witness TOMI HULOPI alias TOMI and witness MULIADI alias ADI as members of the Gorontalo City Police Narcotics Unit that Br. JEFRI TAHA Alias YOKER (DPO), who is a former convict, still often carries out trading activities for methamphetamine-type narcotics, based on this information, Witness TOMI HULOPI Alias TOMI together with Witness MULIADI Alias ADI conducted an investigation and from the results of the investigation Witness TOMI HULOPI Alias TOMI and Witness MULIADI Alias ADI together with the Gorontalo City Police Narcotics Unit Team are looking for Br. JEFRI TAHA Alias YOKER and after Br. It was discovered that JEFRI TAHA, alias YOKER, immediately conducted reconnaissance of his activities and saw Br. JEFRI TAHA Alias YOKER was riding a motorbike with the Defendant HIDAYAT ALIBASYA Alias DAYAT and Br. JEFRI TAHA Alias YOKER who rode with the Defendant HIDAYAT ALIBASYA Alias DAYAT stopped at a BCA ATM then headed for the Complex around SMP 7 Gorontalo City, Then Witness TOMI HULOPI Alias TOMI and Witness MULIADI Alias ADI together with the Gorontalo City Police Narcotics Unit Team saw the Defendant get off the motorbike and took an object in the form of a methamphetamine-type Narcotics package wrapped in a Dancow Milk wrapper which was taken in front of a trash can on instructions / delivery from Br. JEFRI TAHA Alias YOKER; Then the Witness TOMI HULOPI Alias TOMI and Witness MULIADI Alias ADI together with the Gorontalo City Police Narcotics Unit Team saw

the Defendant get off the motorbike and take an object/item in the form of a package of Methamphetamine Narcotics wrapped in a Dancow Milk wrapper which was taken in front of an overhead trash can instructions / delivery from Mr. JEFRI TAHA Alias YOKER; Then the Witness TOMI HULOPI Alias TOMI and Witness MULIADI Alias ADI together with the Gorontalo City Police Narcotics Unit Team saw the Defendant get off the motorbike and take an object/item in the form of a package of Methamphetamine Narcotics wrapped in a Dancow Milk wrapper which was taken in front of an overhead trash can instructions / delivery from Mr. JEFRI TAHA Alias YOKER;

Furthermore, the Defendant, after taking the package of Narcotics of the methamphetamine type which was wrapped in a Dancow milk wrapper, then rushed to get on the motorbike driven by Br. JEFRI TAHA Alias YOKER then headed to Jalan Achmad Najamuddin Wumialo Village, Kota Tengah District, Gorontalo City to be precise in the Complex around the Gorontalo District Court and entered a small road / alley and Witness TOMI HULOPI Alias TOMI and Witness MULIADI Alias ADI together with the Gorontalo City Police Narcotics Unit Team again saw the Defendant taking an object in the form of a package of narcotics of the type of methamphetamine around the hallway and Mr.

That for the actions of the Defendant, witness TOMI HULOPI Alias TOMI and Witness MULIADI Alias ADI together with the Gorontalo City Police Narcotics Unit Team immediately intercepted the Defendant together with Br. JEFRI TAHA Alias YOKER but sdr. JEFRI TAHA Alias YOKER escaped from being intercepted by the Gorontalo City Police Narcotics Unit team and immediately fled on a motorcycle until the Gorontalo City Police Narcotics Unit team was no longer found.

Whereas the 2 (two) packages of narcotics of the methamphetamine type in the possession of the Defendant which were found as a result of the search were orders from Mr. JEFRI TAHA Alias YOKER (DPO) together with Defendant AHMAD MOPANGGA Alias AMAT Alias MAT (Separate Prosecution Files) were obtained after Br. JEFRI TAHA Alias YOKER transferred an amount of IDR 1,400,000 (one million four hundred thousand rupiah) to Bank BCA account number: 7920826223 in the name of JENICIA ARLIN DJAN whose whereabouts are unknown;

Whereas the Defendant HIDAYAT ALIBASYA Alias DAYAT who owned, kept, controlled or provided Narcotics Category I not plants, namely Narcotics of the type of methamphetamine, had a net weight of 710.83 mg (milli gram) or 0.71083 grams based on the minutes of weighing at the Gorontalo Food and Drug Supervisory Agency without any permission from the Ministry of Health and related agencies and based on the report on the Laboratory test results of the Gorontalo Food and Drug Monitoring Agency (POM) Number: LP/PK-3/POL/19.101.99.20.05.0041.K/03/05.19 dated 21 May 2019 made by Lyna Nurhayati, S. Farm., Apt as the Head of the Testing Section of the Drug and Food Control Center (POM) in Gorontalo which was made under an oath of office where based on examination of evidence of samples of the Narcotics Type of Shabu in plastic

packaging from the Gorontalo City Police Resort with positive test results is Narcotics with the type of Methamphetamine alias methamphetamine.

From the chronology of the two cases above, both of them were proven to have violated the same article and committed the same law violation, namely being proven using, storing and possessing or controlling class 1 narcotics with the type of methamphetamine, alias crystal methamphetamine.

4. Conclusion

Based on the results of the analysis and discussion that have been described above, it can be concluded that the judge's consideration in the disparity in the judge's decision number 94/Pid.Sus/2018/PN.Gto and decision number 138/Pid.Sus/2019/PN.Gto has not fulfilled a sense of justice because the decisions given by the judges for these two cases are very different and from a justice point of view, they are certainly very unfair. The defendant in the first case was sentenced to 4 (four) months in prison which did not have to be served and replaced with medical rehabilitation and social rehabilitation while the defendant in the second case was sentenced to 2 (two) years in prison and 2 (two) months of rehabilitation. In essence, there is no true definition of justice, because what is fair to one person may not be fair to another. Likewise the judge in his decision, even though it cannot be said to be fair in general, in deciding a case the judge also pays attention to the impact that will be produced if a sentence is applied whether it will have a good or bad impact on both the individual and the wider community.

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