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## DISPARITY OF JUDGES' DECISIONS AGAINST CLASS I NARCOTIC DISTRIBUTORS IN THE JURISDICTION OF THE PEKANBARU DISTRICT COURT BASED ON LAW NUMBER 35 OF 2009 ON NARCOTICS

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### ABSTRACT

Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, which states that it regulates sanctions for people who without rights or against the law offer for sale, sell, buy, receive, act as intermediaries in buying and selling, exchange, or hand over Class I Narcotics." Research objectives: to analyze the disparity in judges' decisions against Class I Narcotics dealers in the Pekanbaru City area based on Law Number 35 of 2009 concerning Narcotics, to formulate the causal factors; to find efforts to overcome it. Research methods: sociological legal research, legislative approach and case approach; research location: Pekanbaru Police; population and samples from relevant sources; data sources are primary, secondary and tertiary; data collection techniques are observation, structured interviews and document/literature studies; data analysis is qualitative; the conclusion is inductive. The results of the study are that the implementation of the intended disparity has not been carried out properly. The conclusion is First, the implementation has not been good, proven by the disparity in 6 court decisions for perpetrators who are distributors of methamphetamine narcotics from 2021 to 2023 where the disparity cannot be justified. Second, the factors causing the disparity are from the legislative factors, law enforcement officers, facilities/facilities and the community. Efforts to overcome this are From the legislative factors, the disparity in judges' decisions that are not oriented towards achieving justice and legal benefits for the wider community, should not be carried out by judges so that there are no complaints; conduct socialization of the Criminal Code which regulates the Classification of Perpetrators (Dader); judges also refer to the decision of the Supreme Court of the Republic of Indonesia No. 1386 K/Pid.Sus/2011 dated August 3, 2011 to avoid disparity in decisions that do not provide justice. From the law enforcement factor, the Public Prosecutor takes legal action; the judge also issues a verdict based on the facts of the indictment prepared by the Public Prosecutor based on the facts that occurred; splitting (splitting of case files) is done if the role or weight of the evidence is different in a case. From the facility factor, namely the advocate with the local court conducting legal socialization regarding the importance of the presence of an advocate. From the community factor, namely the community finds out about each role of the perpetrator; the community is given legal socialization regarding matters that affect the severity of the crime in the judge's verdict; the judge is really careful in analyzing the consequences caused by the perpetrator; The defendant presents mitigating witnesses at the trial; The defendant/defendant's legal advisor takes legal action.

**Keywords:** Dealers, Narcotics, Disparity

### ABSTRAK

Pasal 114 ayat (1) Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika, yang menyatakan bahwamengatur sanksi bagi orang yang tanpa hak atau melawan hukum menawarkan untuk dijual, menjual, membeli, menerima, menjadi perantara dalam jual beli, menukar, atau menyerahkan Narkotika Golongan I." Tujuan penelitian: untuk menganalisis disparitas putusan hakim terhadap pelaku pengedar Narkotika Golongan I di wilayah Kota Pekanbaru berdasarkan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika, untuk merumuskan faktor penyebabnya; untuk menemukan upaya mengatasinya. Metode penelitian: penelitian hukum sosiologis, pendekatan perundang-undangan dan pendekatan kasus; lokasi penelitian: Polresta Pekanbaru; populasi dan sampel dari narasumber relevan; sumber data adalah primer, sekunder dan tersier; teknik pengumpulan data adalah observasi, wawancara terstruktur dan studi dokumen/kepastakaan; analisis data adalah kualitatif; kesimpulannya induktif. Hasil penelitian adalah Implementasi disparitas yang dimaksud belum terlaksana dengan baik. Kesimpulannya adalah *Pertama*, implementasinya belum baik dibuktikan terdapat disparitas terhadap 6 putusan pengadilan bagi pelaku yang merupakan pengedar dalam Narkotika jenis sabu- sabu tahun 2021 sampai 2023 dimana disparitas tidak tidak dapat dibenarkan. *Kedua*, Faktor penyebab disparitas dari faktor perundang-undangan, aparat penegak hukum, sarana/ fasilitas dan amsyarakat. Upaya mengatsinya ialah Dari faktor perundang-undangan, disparitas putusan hakim yang tidak berorientasi pada tercapainya keadilan dan kemanfaatan hukum bagi masyarakat luas, jangan dilakukan oleh hakim supaya tidak ada komplain; melakukan sosialisasi hukum KUHP yang mengatur mengenai Klasifikasi Pelaku (*Dader*); hakim juga mengacu putusan Mahkamah Agung RI No. 1386 K/Pid.Sus/2011 tanggal 3 Agustus 2011 untuk menghindari disparitas putusan yang tidak memberikan keadilan. Dari faktor aparat penegak hukum, Jaksa Penuntut Umum melakukan upaya hukum; hakim menjatuhkan vonis juga berdasarkan fakta dakwaan yang disusun oleh Jaksa Penuntut Umum berdasarkan fakta yang terjadi; *splitzing* (pemecahan berkas perkara) dilakukan jika peran maupun berat barang bukti berbeda dalam suatu tindak perkara. Dari faktor sarana fasilitas yaitu yaitu advokat dengan pengadilan setempat melakukan sosialisasi hukum terkait pentingnya kehadiran advokat. Dari faktor mayarakat yaitu masyarakat mencari tahu tentang masing-masing peran pelaku; masyarakat diberikan sosialiasi hukum terkait hal-hal yang mempengaruhi berat ringannya pidana dalam vonis hakim; hakim benar-benar cermat dalam menganalisis akibat yang disebabkan oleh pelaku; Terdakwa mengadirkan saksi yang meringankan di persidangan; Terdakwa/ penasehat hukum terdakwa melakukan upaya hukum.

**Kata Kunci: Pengedar, Narkotika, Disparitas**

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## INTRODUCTION

Enforcing the law is not an easy thing for law enforcement officers to do as the main task of state bureaucrats in the field of law enforcement. The law enforcement officers in question are judges, prosecutors, advocates and the Republic of Indonesia National Police (Polri). To enforce a law, a law must first be made as a guideline, but the making of a law is not a solution to the enforcement of legal problems. "With the end of the making of the law, the legal process has only been completed at one stage of a long journey of regulating society. The stage of making the law must still be

followed by its concrete implementation in everyday society, this is what is then called law enforcement.<sup>1</sup>

The purpose of a court process being carried out in public is to obtain a judge's decision.<sup>2</sup> The court is an institution in the judicial process, where the trial process involves the police, prosecutors and advocates. The final result of the decision of the judicial process, in addition to being called a verdict, can also be in the form of a ruling, depending on the type of case, which is a case containing a dispute filed in the form of a lawsuit (*contentius*) and or a case that does not contain a dispute filed in the form of a request (*voluntair*). The decision and or determination of the judge/court is also called the decision and or determination of the judge, because the judge is the one who leads the trial in court. "The decision of the judge/court decision is interpreted as something that is desired or awaited by the parties in the case/those seeking justice to resolve the dispute between them as well as possible with the hope that legal certainty and justice will be obtained in the case they are."<sup>3</sup>

The duties and authorities of judges to adjudicate legally have great authority. However, "in addition to being based on the principle of legality, the principle of government based on law (*wegmatigheid van bestuur*) also applies, namely every government action known as *rechtshandelingen* or legal government actions. "*Rechtshandelingen* is a government action based on law."<sup>4</sup> This is a form of legal sovereignty, "Legal sovereignty (*rechtssoevereniteit*) upholds the principle that law is the only source of sovereignty."<sup>5</sup> This means that every exercise of state power must be based on law.

Faced with the judge's great authority, the process of making decisions by judges should consider several legal, philosophical and sociological aspects so that the justice that is to be achieved, realized and accounted for in the judge's decision is truly concretely oriented towards legal justice, moral justice and social justice.<sup>6</sup> The judge's authority is so great that it demands high responsibility because the results of the decisions made must be accounted for both to the community and to God. As

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<sup>1</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: PT. Citra Aditya Bakti, 2014), hlm. 191.

<sup>2</sup> Nur Rasaid, *Hukum Acara Perdata*, Cet. III, (Jakarta: Sinar Grafika, 2003), hlm. 48.

<sup>3</sup> Moh. Taufik Makarao, *Pokok-Pokok Hukum Acara Pidana*, Cetakan I (Jakarta: Rineka Cipta, 2004), hlm. 124.

<sup>4</sup> Kuntjoro Purbopranoto, *Beberapa Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi Negara*, (Bandung: Alumni, 1981), hlm. 44.

<sup>5</sup> I Gde Pantja Astawa dan Suprin Na' a, *Memahami Ilmu Negara dan Teori Negara*, (Bandung: Refika Aditama, 2012), hlm. 114.

<sup>6</sup> Dahlan Sinaga, *Kemandirian dan Kebebasan Hakim Memutus Perkara Pidana Dalam Negara Hukum Pancasila*, (Bandung: Nusa Media, 2015), hlm.243-244.

Satjipto Rahardjo termed it, that: "judges must represent the voice of the people who are silent and unrepresented and who are not heard."<sup>7</sup>

Nowadays, drug abuse cases are one of the cases that have been quite often enforced by judges. Drug abuse can be interpreted as a form of deviation, an act or deed carried out by people without rights and without authority by using or distributing narcotics.<sup>8</sup> Based on the Criminal Procedure Code, hereinafter referred to as the Criminal Procedure Code, special criminal acts have their own special procedures, meaning they are different from the procedural laws regulated in the Criminal Procedure Code.<sup>9</sup> Narcotics crimes are specifically regulated in Law Number 35 of 2009 concerning Narcotics.

According to Article 1 number 1 of Law Number 35 of 2009 concerning Narcotics, narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency, which are divided into groups as attached to this law.

Drug abuse is a form of criminal act that is stated as a crime. Crime is an act that violates norms in society, regardless of whether it is against the law or not.<sup>10</sup> Referring to this opinion, the crime of drug abuse is a criminal act because it has violated the laws and regulations. According to Professor Pompe, a criminal act (*Strafbaar Feit*) is defined as follows: a violation of norms (disruption of legal order) which has been intentionally or unintentionally committed by a perpetrator, where the imposition of punishment on the perpetrator is necessary for the sake of maintaining the law and ensuring public interest.<sup>11</sup> The forms of drug abuse in general are by users, dealers, producers, and couriers/drug distribution intermediaries.<sup>12</sup>

The ideal concept of law enforcement is often configured on punishment. The state wants to achieve its goals by punishing criminals, so that punishment is applied

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<sup>7</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif*, (Jakarta: Kompas, 2011), hlm. 92.

<sup>8</sup> Chartika Junike Kiaking, "Penyalahgunaan Narkotika Menurut Hukum Pidana dan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika", *Jurnal Lex Crimen*, Vol. VI No. 1 Januari-Februari 2019, hlm. 106.

<sup>9</sup> Leden Marpaung, *Asas Teori Praktik Hukum Pidana*, Cetakan Kesembilan, (Jakarta: Sinar Grafika, 2017), hlm. 3.

<sup>10</sup> Nandang Sambas dan Dian Andriasari, *Kriminologi Perspektif Hukum Pidana*, Cetakan Pertama, (Jakarta: Sinar Grafika, 2019), hlm. 61.

<sup>11</sup> P. A.F Lamintang dan Franciscus Theojunior Lamintang, *Dasar – Dasar Hukum Pidana di Indonesia*, Cetakan Ketiga, (Jakarta: Sinar Grafika, 2018), hlm. 180.

<sup>12</sup> Dina Eriza Valentine Purba, Alvi Syahrin, Edi Yunara dan M. Eka Putra, "Penerapan Pasal 112 Ayat (1) dan Pasal 127 Ayat (1) Huruf a Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika Dalam Kaitannya Dengan Surat Edaran Mahkamah Agung Nomor 3 Tahun 2015, *Jurnal Ilmiah Penegakan Hukum*, Vol. 9 No. 1 Juni 2022, hlm. 16.

as a tool to achieve state goals. This law has the aim of scaring someone from criminal practices.<sup>13</sup> The purpose of sentencing is to deter, reform the convict and destroy or render the perpetrator of the crime powerless.<sup>14</sup>

Law and justice will be strong if law enforcement officers and all components of society that are its subsystems have legal awareness and a sense of justice.<sup>15</sup> In relation to the implementation of the duties and authorities of judges, the provisions regarding the implementation of the duties and authorities of judges in district courts are very clear that they must be in accordance with the provisions of applicable laws and regulations, in addition they must also reflect justice for the people being tried. However, in its implementation, in Pekanbaru City there are still judges who carry out their duties and authorities, especially in deciding criminal cases, which have not been carried out properly so that they do not reflect justice for the perpetrators, especially perpetrators who are dealers in narcotics crimes.

Based on the Regulation of the Minister of Health Number 44 of 2019 concerning Changes in the Classification of Narcotics, "Methamphetamine or shabu is a Class I Non-Plant narcotic." Where based on initial research conducted by the author through observation, it is known that case decisions that do not reflect justice occur in the Pekanbaru District Court/Industrial Relations and Corruption Crimes, especially against perpetrators of Class I Narcotics Crimes not plants in the form of shabu which are classified as dealers. In the development of this crime, the perpetrators of illicit narcotics trafficking have the ability to have a bad influence on law enforcers by providing a number of rewards that aim to be protected and free to distribute narcotics.<sup>16</sup>

Based on initial research conducted by the author through observation, it is known that in the Pekanbaru District Court/Industrial Relations and Corruption Crimes area against perpetrators of Class I Narcotics Crimes not in the form of plants, the perpetrators are classified as dealers where there has been a disparity in sentences in 16 (sixteen) judges' decisions against 16 (sixteen) perpetrators of narcotics crimes in 2021 to 2023..

From a legal perspective, the legal basis for imposing sanctions on perpetrators of Class I Narcotics Crimes other than plants in the form of crystal methamphetamine, which is classified as a distributor, is one of them in Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, which states that: "Any person who without the right or against the law offers for sale, sells, buys,

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<sup>13</sup> N. E. Algra, dkk, *Mula Hukum*, (Jakarta: Bina Cipta, 1998), hlm. 303.

<sup>14</sup> Leden Marpaung, *Op. Cit.*, hlm. 4.

<sup>15</sup> Beni Ahmad Saebani, *Sosiologi Hukum*, (Bandung:CV Pustaka Setia, 2006), hlm. 199.

<sup>16</sup> Zainab Ompu Jainah, *Budaya Hukum Penegak Hukum Dalam Pemberantasan Tindak Pidana Narkotika*, (Depok: Rajawali Pers, 2017), hlm. 102.

receives, acts as an intermediary in the sale and purchase, exchanges, or hands over Class I Narcotics, shall be punished with life imprisonment or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah)."

Disparity in sentencing is the unequal imposition of sentences by judges on:<sup>17</sup>

1. The same crime;
2. Crimes whose dangerous nature can be compared without a legitimate justification;
3. The same crime but the perpetrator is more than one person.

Criminal disparities in the form of judges' decisions cannot be separated from the judge's discretion in imposing a sentence on a criminal case.<sup>18</sup> Unfounded disparity in sentences is not justified considering the implications that will arise, as stated by Muladi and Barda Nawawi Arif who stated that: "disparity in sentences/punishment will have fatal consequences if it is linked to "correction administration"; a convict who has compared his sentence with the sentence of another convict who is charged with the same article will feel like a victim of "judicial caprice".<sup>19</sup> In such conditions, it is clear that justice, which is the goal of law enforcement, is not realized and public trust in law enforcement institutions and law enforcement officers is decreasing.

These legal and social facts have shown a gap between the legal facts (Das Sollen) which regulate legal sanctions against perpetrators who act as distributors in Class I narcotics crimes other than plants in the Pekanbaru City area, namely Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, with social facts (Das Sein), namely the disparity in the 16 (sixteen) court decisions for perpetrators who act as distributors in Class I narcotics crimes other than plants in the form of crystal methamphetamine from 2021 to 2023 by judges at the Pekanbaru District Court/Industrial Relations and Corruption Court.

## RESEARCH METHODS

This study uses sociological legal research on the effectiveness of law. Sociological legal research is also often referred to as empirical research, namely: "A legal research method that functions to be able to see the law in a

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<sup>17</sup> Oemar Sena Adji, *Hukum Hakim Pidana*, Cetakan Ke-II, (Jakarta: Erlangga, 1984), hlm. 27.

<sup>18</sup> Andrew Ashworth, *Sentencing and Criminal Justice*., 5th Edition, (New York: Cambridge University Press, 2005), hlm. 72.

<sup>19</sup> Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, (Bandung: Alumnus, 1992), hlm. 54.

real sense and examine how the law works in a community environment. Because this study is studying people in living relationships in society, the empirical legal research method can also be said to be sociological legal research." "legal facts then seek solutions to problems that arise in the social symptoms concerned."<sup>20</sup>

Sociological/empirical legal research prioritizes the existence of "field research" which is essentially a method for specifically finding out the reality of what is happening in society, so conducting research on several current problems/hottest issues that are currently raging and expressed in the form of symptoms or social processes."<sup>21</sup>

## **RESULTS AND DISCUSSION**

### **Disparity in Judges' Decisions Against Class I Narcotics Dealers in Pekanbaru City Based on Law Number 35 of 2009 concerning Narcotics**

According to Article 1 number 1 of Law Number 35 of 2009 concerning Narcotics, Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency, which are divided into groups as attached to this Law.

Any act that violates the provisions of the law can be classified as a violation and/or criminal act (crime) so that sanctions can be applied to it. Sanctions are feelings/actions that cause suffering as a result of evil actions/mistakes committed by someone because they violate a rule.<sup>22</sup> Violation of the provisions on the use and distribution of narcotics is a form of criminal act (crime). This statement is reinforced by the results of the author's interview with the Head of the Pekanbaru District Court, in this case represented by the local judge, who stated that: The crime we know as a criminal act has the criteria that if the order/prohibition is violated, then the law has determined the sanction in the form of imprisonment, while the violation is a legal act that is classified as a legal act with a relatively short period of time and a light fine, if referring to the sanctions in Law Number 35 of 2009 concerning Narcotics, then all violations of the provisions that have been regulated in the

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<sup>20</sup>Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI-Pers, 1986), hlm. 43.

<sup>21</sup> Hadari Nawawi, *Metode Penelitian Bidang Sosial*, (Yogyakarta: Gadjah Mada University Press, 1998), hlm. 63.

<sup>22</sup> Ngalm Purwanto, *Ilmu Pendidikan Teoretis dan Praktis*, (Bandung: Remaja Rosdakarya, 2000), hlm. 189.

regulation are subject to sanctions in the form of imprisonment and fines, so that violations of the regulation are criminal acts that we know as narcotics crimes.<sup>23</sup>

Based on observations made by the author in this study, it is known that one form of criminal act of Class I Narcotics Not Plants in Pekanbaru City is as threatened with the threat of criminal sanctions as regulated in Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, which states that: "any person who without rights or against the law offers for sale, sells, buys, receives, acts as an intermediary in the sale and purchase, exchanges, or hands over Class I Narcotics, shall be punished with life imprisonment or a minimum imprisonment of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah)."

Based on observations made by the author, it is known that cases of narcotics crimes that violate the provisions of the above article are very high in Pekanbaru City, especially Class I Narcotics Not Plants in the form of Methamphetamine/shabu-shabu. This statement is reinforced by the results of the author's interview with the Pekanbaru District Court Judge. In the interview, he stated that: "the number of abuses of Class I narcotics not plants is quite high in Pekanbaru City, especially Methamphetamine/Methamphetamine which is known by the public as shabu-shabu."<sup>24</sup>

This statement was further strengthened by the results of the author's interview with an Advocate in Pekanbaru City who Handles Narcotics Crimes. In the interview, he stated that "Throughout 2021 to 2023, quite a lot of Pekanbaru City residents used legal services at his office as free legal assistance or for profit for narcotics crimes dominated by the use of Methamphetamine/shabu-shabu without rights and violating the provisions of Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics."<sup>25</sup>

In the criminal justice system, the court decision made by the judge or also known as the judge's decision is something that is awaited by both the accused and the victim, considering that the judge's decision is the peak in the justice system. As stated that "the judge's decision is the crown and peak of a case that is being examined and tried by the judge."<sup>26</sup> "The judge's decision/court decision will

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<sup>23</sup> Interview of the Author with the Chief Justice of the Pekanbaru District Court, in this case represented by Mrs. Rustan Sinaga, SH., MH, as the Local Judge, on Monday, November 18, 2024, at 13.00 WIB, at the Pekanbaru District Court.

<sup>24</sup> Author's Interview with Mrs. Yosi Astuty, SH as Judge of the Pekanbaru District Court, on Monday, November 18, 2024, at 13.20 WIB, at the Pekanbaru District Court.

<sup>25</sup> Author's Interview with Mrs. Siska Ratnasari, SH., M.H., CPM as an Advocate in Pekanbaru City who Handles Narcotics Crimes, on Thursday, November 14, 2024, at 11.00 WIB, at her office.

<sup>26</sup> Lilik Mulyadi, *Penerapan Putusan..., Loc. Cit.*



determine or establish the actual relationship between the parties to the case." This is related to the broad authority that District Court judges have in deciding cases and sentencing defendants, especially defendants in narcotics crimes.

"Judicial power was born through a fairly long history. It was born with the character of the nation and the character of the nation as the flow of the formation of judicial power. Where the Dutch colonial era and the Japanese occupation when they colonized the country of Indonesia, there was a government and a judicial legal system in force."<sup>27</sup> "In its development, the criminal justice system in Indonesia is implemented in the form of an integrated criminal justice system. An integrated criminal justice system is an institution or agency that works in law enforcement such as the Police, the Prosecutor's Office and the judiciary, although their duties are different and internally have their own goals, but in essence each subsystem in the criminal justice system works together and is bound by the same goal. The substance of the Criminal Procedure Code is a form of an integrated criminal justice system."<sup>28</sup>

The judicial power at the first level of court, namely the district court, is implemented with reference to the provisions of Article 25 of Law Number 48 of 2009 concerning Judicial Power in conjunction with Article 50 of Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts, which reads as follows:

1. "Article 25 of Law Number 48 of 2009 concerning Judicial Power, that: "General courts under the Supreme Court as referred to in paragraph (1) have the authority to examine, try, and decide criminal and civil cases in accordance with the provisions of laws and regulations."
2. "Article 50 of Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts, that: District Courts have the duty and authority to examine, decide, and resolve criminal and civil cases at the first level."

One of the powers of the judge above is carried out by the district court judge in handling narcotics crimes. Therefore, in deciding a case, the judge must consider the applicable law. This is in line with Van Apeldoorn's opinion that the judge must be as follows:<sup>29</sup>

1. Adapting abstract laws to concrete factors, concrete events in society.
2. Add laws that don't already exist if necessary (*rechtvinding*).

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<sup>27</sup> Imam Fawaid dan Abd. Rahman, "Sejarah Hukum Peradilan di Indonesia", *Jurnal Al-Hulmi*, Vol. 3 No. 1 Mei 2021, hlm. 129.

<sup>28</sup> Supriyanta, KUHAP dan Sistem Peradilan Pidana Terpadu, "*Jurnal Wacana Hukum*", Vol. IIV No. 1, Tahun 2019, hlm. 12.

<sup>29</sup> E. Utrecht dan Moch Saleh Djindang, *Pengantar dalam Hukum Indonesia*, (Jakarta: Sinar Harapan, 1980), hlm. 204.

In line with Van Apeldoorn's opinion, it is known that in deciding a case related to the judge's opinion and consideration in applying the article to the defendant, it is known based on several things so that the authority given by the judge in trying, examining and deciding the case does not tend to be arbitrary. As the author knows based on the results of the author's interview with the Head of the Pekanbaru District Court, in this case represented by the local judge, it is known that the judge's authority related to the freedom given by law in imposing sanctions on the defendant in general must prioritize the following things:<sup>30</sup>

1. Applicable laws and regulations
2. Prioritize justice as the purpose of the law
3. Provide benefits to many people
4. Provide legal certainty

The stages to achieve the ideal judge's decision have been applied by the judges of the Pekanbaru District Court. This is known to the author based on the results of his interview with the Judge of the Pekanbaru District Court, it is known that this is carried out by suing the following stages:<sup>31</sup>

1. Constant Stage
2. Qualification Stage
3. Constituent Stage

Disparity in sentencing is the unequal imposition of sentences by judges on:<sup>32</sup>

1. The same crime
2. Crimes whose dangerous nature can be compared without a legitimate justification
3. The same crime but the perpetrator is more than one person.

The disparity that occurred throughout 2022 to 2023 was reinforced by the results of the author's interview with an Advocate in Pekanbaru City who Handles Narcotics Crimes. In the interview, he stated that: "The difference in sentences for defendants in narcotics crimes charged with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics of the Methamphetamine/shabu type varies between one defendant and another. Especially in 2021 to 2023."<sup>33</sup>

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<sup>30</sup> Interview of the Author with the Chief Justice of the Pekanbaru District Court, in this case represented by Mrs. Rustan Sinaga, SH., MH, as the Local Judge, on Monday, November 18, 2024, at 13.00 WIB, at the Pekanbaru District Court.

<sup>31</sup> Author's Interview with Mrs. Yosi Astuty, SH as the Pekanbaru District Court Judge who handles narcotics crimes, on Monday, November 18, 2024, at 13.20 WIB, at the Pekanbaru District Court.

<sup>32</sup> Oemar Sena Adji, *Hukum Hakim...Loc. Cit.*

<sup>33</sup> Author's Interview with Mr. Syahrul, SH., M.H. as an Advocate in Pekanbaru City who Handles Narcotics Crimes, on Thursday, November 14, 2024, at 13.20 WIB, at his office.

Disparity in criminal sentences without basis is not justified considering the implications that will then arise, as stated by Muladi and Barda Nawawi Arif who stated that: Disparity in criminal sentences/punishment will have fatal consequences if linked to "correction administration", a convict who has compared his sentence with the sentence of another convict who is charged with the same article will feel like a victim of "The Judicial Caprice".<sup>34</sup>

Referring to the concept above, the role of law to restore the unfair conditions of the disparity can be done through legal efforts. Legal efforts are intended as protection against arbitrary actions of judges or courts and as a means of revision of previous agency errors and for unity in the judiciary. Justice as the existence of law in criminal justice is an important element in relation to human rights, because speaking of justice from a human rights perspective, human rights values are moral norms and means for law to create its ideals of protecting all humanity from abuse and the implementation of tyrannical power in the legal, economic, social and political fields that apply at the national and international levels.<sup>35</sup>

Based on the results of the author's interview with the Head of the Pekanbaru District Court, in this case represented by the local judge, it is known by the author that "the disparity is based on legal considerations and proper legal reasoning. The occurrence of the disparity is the opinion of other law enforcement officers, the community and the defendant. If it is called a disparity, then the disparity of the Pekanbaru District Court judge is a positive disparity because it is based on legal considerations and proper legal reasoning. Because basically the application of modern law is not only rigid in legal positivism, meaning it is not rigid based on laws and regulations alone, but also guided by Social Jurisprudence and living law. The Social Jurisprudence in question is the consideration of the defendant's condition and also the legal culture and social conditions that occur in the community. Living law is interpreted as a law that has existed for a long time, has developed and is still obeyed by society to this day."<sup>36</sup>

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<sup>34</sup> Muladi dan Barda Nawawi Arief, *Teori-Teori...*, *Loc. Cit.*

<sup>35</sup> Anak Agung Gede Wiweka Narendra, I Gusti Bagus Suryawan, dan I Made Minggu Widyantara, "Pertimbangan Hukum Terhadap Putusan Lepas Dari Segala tuntutan Hukum (*Ontslag Van Rechtsvervolging*)", *Jurnal Konstitusi Hukum*, Vol. 1 No. 2 Oktober 2020, hlm. 246.

<sup>36</sup> Interview of the Author with the Chief Justice of the Pekanbaru District Court, in this case represented by Mrs. Rustan Sinaga, SH., MH., as the Local Judge, on Monday, November 18, 2024, at 13.00 WIB, at the Pekanbaru District Court.

Then, further based on the results of the author's interview with the Pekanbaru District Court Judge, the emergence of disparities is basically a judge's decision which is implemented with the following considerations:<sup>37</sup>

1. If she is female, then it is considered whether she is a housewife (IRT)/errand girl/ or just a small part of the crime, whether she only receives a salary
2. Her role in a criminal case in the context of the perpetrator (dader) according to the provisions of Article 55 of the Criminal Code, namely whether she is the mastermind of the perpetrator, an accomplice, knows but does not report or only participates, and so on
3. Paying attention to the extent to which the impact of her actions occurred, related to the form of assets purchased/built from the proceeds of narcotics crimes
4. How do they distribute the money from the proceeds of narcotics crimes, whether they have used Information Technology/IT (Information Technology) or still manually. Are there indications of money laundering or not.
5. The allocation of money obtained from the crime committed
6. Whether or not there is a certain network in the crime committed by the defendant
7. In court he was frank/told the truth or not
8. Has he ever been convicted or not.

Based on the results of the author's interview with the Head of the Pekanbaru District Court, in this case represented by the local judge, the Graph of Disparity in Decisions of Pekanbaru District Court Judges Against Dealers of Methamphetamine/Shabu Shabu Narcotics in Pekanbaru City who were Charged with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics from 2021 to 2023, above he explained the following:<sup>38</sup>

1. Disparity in 2021 as many as 4 cases
2. Disparity in 2022 as many as 7 cases
3. Disparity in 2023 as many as 5 cases
4. The total disparity that occurred from 2021 to 2023 was 16 cases.

The disparity in judges' decisions against perpetrators of Class I Narcotics distribution in the Pekanbaru City area for the type of Methamphetamine/Shabu-

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<sup>37</sup> Author's Interview with Mrs. Yosi Astuty, SH as Pekanbaru District Judge on Monday, November 18, 2024, at 13.20 WIB, at the Pekanbaru District Court.

<sup>38</sup>Interview of the Author with the Chief Justice of the Pekanbaru District Court, in this case represented by Mrs. Rustan Sinaga, SH. MH, as the Local Judge, on Monday, November 18, 2024, at 13.00 WIB, at the Pekanbaru District Court.

Shabu in Pekanbaru City from 2021 to 2023, which the author describes per case as follows:

### **1. Decision Number 260/Pid.Sus/2021/PN Pbr.**

Based on observations made by the author, it is known that there was a criminal act of narcotics abuse Class I Methamphetamine/Shabu-Shabu in 2021 by a dealer with the initials MH. This is reinforced by the results of the author's interview with an Advocate in Pekanbaru City who Handles Narcotics Crimes, who stated that: "On November 25, 2021 at around 21:30 WIB, the dealer was arrested by officers from the Pekanbaru City Police Narcotics Unit at a location behind the Simpang Tiga Health Center, with evidence of 3.55 grams of crystal methamphetamine in a small clear plastic bag which was then wrapped again in Rp. 5,000 (five thousand rupiah) banknotes, (one) black Realme cellphone, 1 (one) navy blue Eiger 1989 bag, 1 (one) BCA Bank ATM card and 1 (one) BRI Bank ATM card." <sup>39</sup>

In relation to the crime of Class I Non-Plant narcotics type 1 package of Methamphetamine/Shabu-Shabu, the author also conducted an interview with the Head of the Pekanbaru District Court/Industrial Relations and Corruption Crimes Court, in this case represented by the local judge. In the interview, he stated that: His party determined the suspect MH as charged and charged by the Public Prosecutor with the charges and demands as contained in Article 114 paragraph (1) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. At that time, the Defendant MH who was accompanied by his Legal Counsel made a defense and objection to the charges and demands." <sup>40</sup>

In relation to this matter, based on observations made by the author in this thesis research, it is known that the Panel of Judges at the Pekanbaru District Court issued a verdict that can be said to be a disparity in the verdict against the perpetrators of MH distribution.

This is reinforced by the results of the author's interview with the Pekanbaru District Court Judge who handles narcotics crimes, that "MH is a dealer where according to the judge's demands he was charged with Article 114 paragraph (1) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and was sentenced to 6 (six) years in prison minus the time the defendant was in temporary detention with an order that the defendant remain detained and impose a fine on the defendant of Rp. 2,000,000,000, - (two billion rupiah) subsidiary 3 (three) months in prison. According to him, Decision Number 260 / Pid.Sus / 2021 / PN Pbr is

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<sup>39</sup> Author's Interview with Mr. Syahrul, SH., M.H. as an Advocate in Pekanbaru City who Handles Narcotics Crimes, on Thursday, November 14, 2024, at 13.20 WIB, at his office.

<sup>40</sup> Interview of the Author with the Chief Justice of the Pekanbaru District Court, in this case represented by Mrs. Rustan Sinaga, SH. MH, as the Local Judge, on Monday, November 18, 2024, at 13.00 WIB, at the Pekanbaru District Court.

basically based on legal reasoning, legal considerations, paying attention to what is called social jurisprudence, so according to him; it is fair. If there is a disparity, it means that the judge considered the conditions of the defendants because the conditions of the defendants also became a consideration for the judge in making a decision, the defendant, either through his attorney or independently, objected to the decision mentioned, they have the right to make an appeal for the Defendant against the decision at the District Court level. So please use that right.<sup>41</sup>

The author also conducted an interview with the perpetrator, who stated that: "In 2021, he distributed narcotics in the form of crystal methamphetamine and was charged with Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. He was sentenced to 6 (six) years in prison and a fine of Rp. 2,000,000,000,- (two billion rupiah) subsidiary to 3 (three) months in prison."<sup>42</sup>

## **2. Decision Number 938/Pid.Sus/2021/PN Pbr.**

Based on observations made by the author, it is known that a criminal act of abuse of Class I narcotics Methamphetamine/Shabu-Shabu occurred in 2021 by a dealer with the initials FR. This is reinforced by the results of the author's interview with an Advocate in Pekanbaru City who Handles Narcotics Crimes, who stated that: "In April 2021 at around 17.30 WIB at Jl. Yossudarso Gg. Hiu III RT. 003 Rw. 004 Kel. Meranti Pandak Kec. Rumbai Pesisir Pekanbaru City, precisely at the perpetrator's shop, the perpetrator with the initials FR was arrested by officers from the Pekanbaru City Police Narcotics Investigation Unit, with evidence of 1 (one) small brown wallet, 22 (twenty two) packages/packages of small clear plastic containing narcotics of the type of crystal methamphetamine with a net weight of 1.45 grams (one point forty five grams), 1 (one) Hammer brand cellphone, black, and money amounting to Rp. 180,000, - (one hundred and eighty thousand rupiah)."<sup>43</sup>

In relation to the crime of Class I Non-Plant narcotics type 1 package of Methamphetamine/Shabu-Shabu, the author also conducted an interview with the Head of the Pekanbaru District Court, in this case represented by the local judge. In the interview, he stated that: "His party in the case at that time had essentially determined the suspect FR as charged and charged by the Public Prosecutor with the charges and demands as contained in Article 114 paragraph (1) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. At that time, the

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<sup>41</sup> Author's Interview with Mrs. Yosi Astuty, SH as Judge of the Pekanbaru District Court, on Monday, November 18, 2024, at 13.20 WIB, at the Pekanbaru District Court.

<sup>42</sup> Author's Interview with MH as a Convict of Class I Narcotics Crimes Other Than Plants, Type of Crystal Methamphetamine in Pekanbaru City in 2021, on Thursday, November 21, 2024, at 10.20 WIB.

<sup>43</sup> Author's Interview with Mr. Syahrul, SH., M.H. as an Advocate in Pekanbaru City who Handles Narcotics Crimes, on Thursday, November 14, 2024, at 13.20 WIB, at his office.

Defendant MH who was accompanied by his Legal Counsel made a defense and objection to the charges and demands of the Public Prosecutor.”<sup>44</sup>

In relation to this matter, based on observations made by the author, it is known that the Panel of Judges at the Pekanbaru District Court issued a verdict that could be said to be a disparity in the verdict against the perpetrators of FR distribution. This is reinforced by the results of the author's interview with the Pekanbaru District Court Judge who handles narcotics crimes, that "FR is a dealer where according to the judge's demands he was charged with Article 114 paragraph (1) Jo. Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and was sentenced to imprisonment for 6 (six) years 2 (two) months minus the period of detention that has been served by the defendant and Rp. 1,000,000,000, - (one billion rupiah) subsidiary 3 (three) months in prison. According to him, Decision Number 938 / Pid.Sus / 2021 / PN Pbr was based on legal reasoning, legal considerations, paying attention to what is called social jurisprudence, so according to him; it was fair. If there is a disparity, it means that the judge considered the conditions of the defendants because the conditions of the defendants also became a consideration for the judge in making decisions, the defendants, either through their attorneys or independently, objected to the decision, they can have the right to make an appeal for the Defendant against the decision at the District Court level. So please use this right.”<sup>45</sup>

The author also conducted an interview with the perpetrator, who stated that: "In 2021, he distributed narcotics in the form of crystal methamphetamine and was charged with Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. He was sentenced to 6 (six) years and 2 months in prison and a fine of Rp. 1,000,000,000 (one billion rupiah) subsidiary to 3 (three) months in prison. He did not accept it because his verdict was heavier than his other friends, but he did not appeal due to limited funds to pay for legal services.”<sup>46</sup>

Related to the problems in this research, the author analyzes that the existence of disparities in judges' decisions against narcotics dealers in Pekanbaru City who are charged with Article 114 paragraph (1) of Law Number 35 of 2009 concerning

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<sup>44</sup>Interview of the Author with the Chief Justice of the Pekanbaru District Court, in this case represented by Mrs. Rustan Sinaga, SH. MH, as the Local Judge, on Monday, November 18, 2024, at 13.00 WIB, at the Pekanbaru District Court.

<sup>45</sup> Author's Interview with Mrs. Yosi Astuty, SH as the Pekanbaru District Court Judge who handles narcotics crimes, on Monday, November 18, 2024, at 13.20 WIB, at the Pekanbaru District Court.

<sup>46</sup> Author's Interview with FR as a Convict of Class I Narcotics Crimes Other Than Plants, Type of Crystal Meth in Pekanbaru City in 2021, on Thursday, November 21, 2024, at 09.50 WIB.

Narcotics does not improve the actions of society in general and perpetrators in particular. This is proven by the high number of narcotics crimes in Pekanbaru City which dominates when compared to the number of other criminal cases.

### **Factors Causing Disparities in Judges' Decisions Against Class I Narcotics Dealers in the City of Pekanbaru Based on Law Number 35 of 2009 concerning Narcotics**

Based on observations made by the author, it is known that the factors causing disparities in judges' decisions against perpetrators of Class I Narcotics distribution in the Pekanbaru City area based on Law Number 35 of 2009 concerning Narcotics are as follows:

1. The legal factor is that judges related to the freedom granted by law in imposing sanctions on defendants in general must prioritize things, namely justice as the purpose of the law, providing benefits to many people and providing legal certainty. This is what underlies the disparity where these things are fulfilled, then the disparity is positive
2. The law enforcement factor, namely in addition to deciding cases based on law and the scope of social jurisprudence, judges also in principle use their reasoning with the aim of expanding the principle of adjudication. This is used by judges as a guideline in determining certain circumstances to be accountable to the perpetrators of criminal acts. Related to trying in the realm of accompanying crimes, both subjective accompanying and objective accompanying, so that there is a disparity in the verdict of narcotics criminal cases
3. The community factor in this case is the defendant of a narcotics criminal act, namely:
  - a. His role in a criminal case according to the provisions of Article 55 of the Criminal Code, namely whether he is the mastermind, an accomplice, or just a participant, and so on
  - b. In the trial he is frank/tells the truth or not
  - c. He has never been convicted.

Based on the results of the author's interview with an Advocate in Pekanbaru City who Handles Narcotics Crimes, it is known that the factors causing disparities in judges' decisions against perpetrators of Class I Narcotics dealers in Pekanbaru City based on Law Number 35 of 2009 concerning Narcotics, originate from the following community factors:<sup>47</sup>

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<sup>47</sup> Author's Interview with Mr. Syahrul, SH., M.H. as an Advocate in Pekanbaru City who Handles Narcotics Crimes, on Thursday, November 14, 2024, at 13.20 WIB, at his office.



1. Has the perpetrator ever been convicted based on a final court decision in a previous case?
2. The perpetrator's cooperation/honesty during the trial examination.

Based on the results of the author's interview with convicts of Class I Narcotics crimes other than plants, namely crystal methamphetamine in Pekanbaru City in 2021, it was discovered that the factors causing disparities in judges' decisions against Class I Narcotics dealers in Pekanbaru City based on Law Number 35 of 2009 concerning Narcotics, came from community factors, namely: "the severity of the evidence of crystal methamphetamine for convicts."<sup>48</sup>

Based on the results of the author's interview with convicts of Class I Narcotics crimes other than crystal methamphetamine plants in Pekanbaru City in 2021, it is known that the factors causing disparities in judges' decisions against Class I Narcotics dealers in Pekanbaru City based on Law Number 35 of 2009 concerning Narcotics, originate from community factors, namely:<sup>49</sup>

1. Has the perpetrator been convicted or not
2. Witness testimony during the trial
3. Involved in a drug distribution network or not.

Based on the results of the author's interview with Convicts of Class I Narcotics Crimes Other Than Plants of the Methamphetamine Type in Pekanbaru City in 2022, it is known that the factors causing disparities in judges' decisions against perpetrators of Class I Narcotics dealers in the Pekanbaru City area based on Law Number 35 of 2009 concerning Narcotics, originate from law enforcement factors, namely "the judge's bias or lack of bias towards the perpetrator resulting in different decisions against defendants of narcotics crimes who are both subject to Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics."<sup>50</sup>

Based on the results of the author's interview with Convicts of Class I Narcotics Crimes Other Than Plants of the Methamphetamine Type in Pekanbaru City in 2023, it is known that the factors causing disparities in judges' decisions against perpetrators of Class I Narcotics dealers in the Pekanbaru City area based on

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<sup>48</sup> Author's Interview with MH as a Convict of Class I Narcotics Crimes Other Than Plants, Type of Crystal Methamphetamine in Pekanbaru City in 2021, on Thursday, November 21, 2024, at 10.20 WIB.

<sup>49</sup> Author's Interview with FR as a Convict of Class I Narcotics Crimes Other Than Plants, Type of Crystal Meth in Pekanbaru City in 2021, on Thursday, November 21, 2024, at 09.50 WIB.

<sup>50</sup> Author's Interview with IH as a Convict of Class I Narcotics Crimes Other Than Plants, Type of Crystal Meth in Pekanbaru City in 2022, on Thursday, November 21, 2024, at 09.00 WIB.

Law Number 35 of 2009 concerning Narcotics, originate from law enforcement factors, namely from community factors, namely:<sup>51</sup>

1. Whether the perpetrators behaved politely or not during the trial
2. The weight/lightness of the evidence of crystal methamphetamine belonging to each perpetrator.

Based on the overall research results above, the author analyzes that the factors causing disparities in judges' decisions against perpetrators of Class I Narcotics dealers in the Pekanbaru City area based on Law Number 35 of 2009 concerning Narcotics, originate from law enforcement factors, namely from community factors, namely:

1. Legislative factors, namely:

- a. the law enforcement system in Indonesia does not stand alone based only on applicable laws and regulations, but must also pay attention to aspects of society related to the law that lives in the living law society and also social jurisprudence. Such conditions apply to all law enforcement officers, especially judges in examining, trying and deciding cases in court so that judges have the authority that is also not only based on applicable laws in order to achieve justice and legal benefits for the wider community;
- b. Article 55 of the Criminal Code regulates the Classification of Perpetrators (Dader) whether the mastermind of the perpetrator, an accomplice, or just participating, and so on. This affects the judge's verdict to impose a sentence based on the role of the perpetrator in a narcotics crime;
- c. The existence of maximum and minimum limits in Law Number 35 of 2009 concerning Narcotics gives judges the freedom to impose sentences. This is what causes differences in punishment or causes disparities in sentencing

2. Law enforcement factors, namely:

- a. In addition to deciding cases based on the law and the scope of social jurisprudence, judges also principally use their reasoning with the aim of expanding the principle of adjudication. This is used by judges as a guideline in determining certain circumstances to be accountable to the perpetrators of criminal acts. Related to trying in the realm of accompanying crimes, both subjective accompanying and objective accompanying, so that there is a disparity in the verdict of narcotics criminal cases;
- b. The contents of the Public Prosecutor's indictment are different from the facts revealed in court, thus affecting the judge's conviction;

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<sup>51</sup> Author's Interview with OJ as a Convict of Class I Narcotics Crimes Other Than Plants, Type of Crystal Methamphetamine in Pekanbaru City in 2023, on Thursday, November 21, 2024, at 09.10 WIB.

- c. Splitting (splitting of case files) by the Public Prosecutor
- 3. Facilities/facilities factors, namely the perpetrator is not accompanied by an advocate due to limited funds or a narrow mindset that views that using the services of an advocate will still be punished, even though the services of an advocate are provided free of charge by the local court. This causes the absence of a systematic and conceptual exception or plea submission which actually greatly influences the leniency of the perpetrator's sentence
- 4. Community factors, namely:
  - a. The role of the community/perpetrator in narcotics crimes is different
  - b. Has the perpetrator ever been convicted based on a final court decision in a previous case;
  - c. The perpetrator's cooperation/honesty during the examination at trial;
  - d. The severity of the evidence of different perpetrators even though they are both charged with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics/ Information on sanctions during examination at trial;
  - e. depending on the consequences caused by the perpetrator where each of the perpetrators in committing narcotics crimes is not always the same as the consequences of their actions;
  - f. Involved in a narcotics distribution network or not;
  - g. Whether the perpetrator is polite or not during the trial.

## CONCLUSION

1. The implementation of disparity in judges' decisions against perpetrators of Class I Narcotics dealers in Pekanbaru City based on the regulation still occurs in 2 (two) court decisions for perpetrators who are dealers in Class I Narcotics Crimes other than plants in the form of crystal methamphetamine from 2021 to 2023 where the disparity is not based on law, so it cannot be justified.
2. The factors that cause this disparity are: Legislative factors, namely the law enforcement system in Indonesia is not only based on laws and regulations but must also pay attention to aspects of society related to the laws that live in society, living law and also social jurisprudence; Article 55 of the Criminal Code regulates the Classification of Perpetrators (Dader) which influences the judge's verdict to impose a sentence based on the role of the perpetrator; the maximum and minimum limits in Law Number 35 of 2009 concerning Narcotics give judges the freedom to impose sentences. Law enforcement factors,

namely in addition to deciding cases based on the law and the scope of social jurisprudence, judges also principally use their reasoning with the aim of expanding the principle of adjudication; the contents of the Public Prosecutor's indictment differ from the facts revealed in court; splitting (splitting of case files) by the Public Prosecutor. Community factors, namely the role of the community/perpetrator in narcotics crimes varies; Has the perpetrator been convicted or not based on a final court decision in a previous case; The perpetrator's cooperation/honesty during the trial The severity of the perpetrator's evidence; depends on the consequences caused by the perpetrator; The perpetrator is involved in a narcotics distribution network or not; The perpetrator is polite or not during the trial. Facilities/facilities factors, namely the perpetrator is not accompanied by an advocate due to limited funds or a narrow mindset that views that using the services of an advocate will still be punished, even though the services of an advocate are provided free of charge by the court.

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