



Criminal Disparities in the Judiciary in Tasikmalaya City (Study of Decision No. 113 / Pid. Sus / 2020 / PN.Tsm and No 114 / Pid.Sus / 2020 / PN.Tsm)

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Abstract

Different conviction or disparity of sentencing in judges discretionary form at imposing of judgment for making a decision. This case impacts disappointment for the general public and especially for conviction. This research purposes to know the rule of sentencing disparity on criminal law in Indonesia. Furthermore, some factor sentencing disparity happened in the article No. 113/Pid.Sus/2020/PN.Tsm and article No. 114/Pid.Sus/2020/PN.Tsm in narcotic crime case at Tasikmalaya. This research uses a normative juridical method done through literature study that analyzes secondary data in the form of laws and regulation, legal document, the result of research, assessment of result and others reference through interview. This study's results are: 1) The rule of disparity of sentencing criminal procedural law in Indonesia list in article 197 KUHP, judges must consider determining strafmaat for defendant through material evidence at trial to support the conclusion considerate of judges. There is a limit of judges to deciding cases that regulate in article 183 KUHP. 2) Factor of sentencing disparity in the article No. 113/Pid.Sus/2020/PN.Tsm and article No. 114/Pid.Sus/2020/PN.Tsm in narcotic crime case, there is other evidence from each defendant that makes the basis of consideration is different. However, the defendant's role in committing a crime was some in the article No. 35 Tahun 2009 about Narcotic regarding provisions of the crime. The researcher suggests that when judges decide the matter that contained disparity of sentencing, accordingly, it must rely on objective consideration.

Keywords: Disparity of Sentencing, Conviction, Narcotic.

Abstrak

Pemidanaan yang berbeda atau disparitas pidana merupakan bentuk dari diskresi hakim dalam menjatuhkan putusan, hal ini memicu timbulnya ketidakpuasan khususnya bagi terpidana dan masyarakat pada umumnya. Penelitian ini bertujuan untuk mengetahui pengaturan disparitas pidana dalam hukum acara pidana di Indonesia serta mengetahui faktor terjadinya disparitas pidana terhadap Putusan No. 113/Pid.Sus/2020/PN.Tsm dan Putusan No. 114/Pid.Sus/2020/PN.Tsm dalam perkara tindak pidana narkotika di Kota Tasikmalaya. Penelitian ini menggunakan metode penelitian yuridis normatif, yaitu dilakukan melalui studi pustaka yang menelaah data sekunder berupa peraturan perundang-undangan, dokumen hukum, hasil penelitian, hasil pengkajian, referensi lainnya serta dilengkapi dengan wawancara. Hasil dari penelitian ini adalah: 1) Pengaturan disparitas pidana dalam hukum acara pidana di Indonesia tercantum pada Pasal 197 KUHP dimana hakim harus memiliki pertimbangannya sendiri didalam menentukan berat atau ringannya hukuman yang akan dijatuhkan kepada terdakwa melalui pembuktian materiil dipersidangan untuk mendukung kesimpulan dalam pertimbangan hakim serta terdapat batasan untuk hakim dalam memutus perkara yang telah diatur dalam Pasal 183 KUHP. 2) Faktor terjadinya disparitas pidana terhadap Putusan No. 113/Pid.Sus/2020/PN.Tsm dan Putusan No. 114/Pid.Sus/2020/PN.Tsm dalam perkara tindak pidana narkotika yaitu adanya perbedaan barang bukti dari masing-masing terdakwa yang menjadikan dasar pertimbangan hakim menjatuhkan putusan yang berbeda meskipun peran dari terdakwa dalam melakukan tindak pidananya sama dan menurut Undang-Undang No. 35 tahun 2009 tentang Narkotika mengenai ketentuan pidananya seharusnya sama. Saran dari peneliti yaitu ketika memutuskan sebuah perkara ada disparitas pidana didalamnya, maka hal tersebut harus benar-benar didasari pada pertimbangan secara obyektif.

Kata kunci: Disparitas Pidana, Pemidanaan, Narkotika

I. Introduction

The criminal disparity is the difference between a sentence imposed and the sound of legislation, which is caused by juridical or extra-juridical reasons. The disparity of sentencing applies unequal or unbalanced crimes by judges against the same crime (same offense) or against criminal acts whose dangerous nature can be compared without a valid justification.¹

According to Harkristuti Harkrisnowo, criminal disparities can occur in several categories, namely ²:

- a. Disparities between the same criminal offenses
- b. The disparity between crimes that have the same level of seriousness
- c. Disparities in the crimes imposed by one panel of judges
- d. Disparities between the crimes imposed by different judges for the same crime

In Harkristuti Harkrisnowo's opinion, it was found a place where disparities grew and had a history in law enforcement in Indonesia. The disparity occurs in the same criminal act and the level of seriousness of a criminal act and judges' decisions, both by one panel of judges and by different judges' panels for the same case. Of course, the reality regarding the scope for growing this disparity creates inconsistencies in the judiciary.³

One of the criminal acts that can trigger disparities in determining a decision is the crime of narcotics. This misuse of narcotics is a criminal act in which the perpetrator is involved, where a person violates government regulations regarding narcotics and has sufficient evidence to carry out a verdict or conviction.

From the beginning until now, imposing convictions on criminal offenders has always been discussed and debated by the public, mainly related to the application of criminal law sanctions. According to Alf Ross in his book "On Guilt Responsibility and Punishment," there are two types of convictions: the first is aimed at retaliating for the perpetrator's suffering, and the second is for the perpetrator's actions.⁴

There is no limit to the Judge's freedom in choosing the time, but this does not mean that "the Judge is free and obeys his own subjective will. Objective considerations must accompany this freedom of judges."⁵

Public opinion often assesses an act committed by someone with another person, and it could be different reasons or motives for committing a criminal act even though the act is the same. It is not uncommon for differences in criminal sanctions imposed on a person and another person who has committed the same or similar criminal activity. An example is the case of narcotics, the position of a person in committing a narcotics crime has the same role and is also the same in the indictment, but others can be different in the imposition of criminal sanctions what makes people confused why this happens.

There were two decisions from the problems in Tasikmalaya, namely the decision with Case Number 113 / Pid.Sus / 2020 / PN.Tsm. and a decision with Case Number 114 / Pid.Sus / 2020 / PN.Tsm. Both decisions accuse the same article, namely Article 114 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, but in the Judge's decision, some differences can lead to criminal disparities. Therefore, the problem arises of how the actual regulation of criminal disparity in criminal procedural law in Indonesia and the factors that cause the disparity of crime in the decision with Case Number 113 / Pid.Sus / 2020 / PN.Tsm. and a decision with Case Number 114 / Pid.Sus / 2020 / PN.Tsm on narcotics crime.

¹ Asep Maulana, "Disparitas Putusan Hakim Dalam Memutuskan Sebuah Perkara Tindak Pidana Narkoba", *Skripsi*, (Jakarta: UIN Syarif Hidayatullah; Fakultas Syari'ah Dan Hukum, 2006), 5.

² Kurnia Dewi Anggraeny, "Disparitas Pidana Dalam Putusan Hakim Terhadap Tindak Pidana Psikotropika Di Pengadilan Negeri Sleman", *Jurnal Hukum Novelty*, Vol. 2.(7), (2016): 229-230..

³ *Ibid.*

⁴ Asep Maulana, *loc.cit*

⁵ Made Darma Weda, "Kronik dalam Penegakan Hukum Pidana", Jakarta: Candimas Metropole, hal. 81.1999.

II. Research Problems

1. How is the regulation of criminal disparity in criminal procedural law in Indonesia?
2. What are the factors that cause disparities in criminal decisions with Case Number 113/Pid.Sus/2020/PN.Tsm. and a decision with Case Number 114/Pid.Sus/2020/PN.Tsm on narcotics crime?

III. Research Methods

The method in this research uses normative juridical research. Normative legal research is this type of research using secondary data types, namely data obtained to get a theoretical basis.

Data collection is done by reading, studying, and reviewing data in books, literature and scientific writings, legal documents, and laws and regulations related to research objects.⁶

This research is descriptive, which provides an overview regarding the regulation of criminal disparity in criminal procedural law in Indonesia and the factor of criminal disparity by looking at the two decisions in the Tasikmalaya District Court. In this paper, the writer will use secondary data sources. Secondary data is data obtained from the literature by conducting literature studies, namely studying documents, archives, and literature by studying theoretical matters, concepts, views, legal principles relating to the subject matter, and legal knowledge consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data in this study were obtained through Library Research. This library research is conducted to obtain secondary data, which includes primary, secondary, and tertiary legal materials. Secondary data is obtained by carrying out an inventory of statutory regulations, official documents, and literature, recorded based on their relevance to the subject matter for later review as a complete study.

Methods arranged systematically, logically, and rationally. In this case, the analysis used qualitative data analysis not to be directly measured or assessed by numbers. Data were analyzed qualitatively by describing and interpreting data based on existing legal theories (Theoretical Interpretation).⁷ Thus, after the primary data and secondary data in the form of documents are complete, it is then analyzed with regulations related to the problem under study.

IV. Research Results And Discussions

1. Research results

Based on Law Number 35 of 2009 concerning Narcotics, the narcotics crime scope can be identified. For the subject of narcotics crime based on Law Number 35 of 2009 concerning Narcotics, including all legal subjects, namely any person or human (*persoon*), legal entity (*rechtspersoon*) or a corporation can be subject to crime.⁸

Actions prohibited by Law Number 35 of 2009 concerning Narcotics are very involved in regulating and supervising narcotics' illicit circulation, whose essence is to protect the public from the dangers of illicit trafficking and narcotics abuse. Institutional strengthening also regulates the BNN as a related agency starting from the district/ city, province, and central government.⁹

The judges' decisions handed down can sometimes be perceived as fair and accepted by the community and sometimes cause controversy. Decisions that invite reactions or controversy are usually because the judges' decisions have not fulfilled justice in society. Indeed, it is very

⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif*, (Raja Grafindo Persada, Jakarta, 2001), 31

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Pranada Media, Jakarta, hal.96. 2010.

⁸ Devy Irvanthy Hasibuan, Syafruddin Kalo, dkk, 2015, Disparitas Pemidanaan Terhadap Pelaku Tindak Pidana Narkotika, *USU Law Journal*, Vol. 3 No. 1 (2015): 90.

⁹ *Ibid*,

relative to obtain a judge's decision that fulfills the community's sense of justice. Only judges who have idealism, call the Judge's conscience, can produce a quality decision.¹⁰

Harkristuti Harkrisnowo said that judges' subjectivity in handing down crimes should have confused and confused the legislators, but apparently, no one felt that way except academics.¹¹ The reasons for the judges' decisions containing criminal disparities were not based on a clear legal basis. However, sentencing tends to refer to the Judge's personal opinion rather than legal considerations attached to the perpetrator, the victim, or the impact of society's crime. The next reason is that such a decision can also have implications for the emergence of skepticism and a priori hostile society towards the world of justice because it injures the sense of justice of society.¹²

According to Sholehuddin, the criminal disparity cannot be eliminated. Because it concerns the extent to which it is an inevitable result of the Judge's obligation to consider all the relevant elements in an individual case regarding his sentence. After all, disparity does not automatically lead to unfair inequality. Likewise, equality in punishment does not automatically lead to the proper punishment.¹³

Narcotics crime case between decision number 113 / Pid.Sus / 2020 / PN.Tsm and decision number 114 / Pid.Sus / 2020 / PN.Tsm contains a disparity in criminal cases in which there is a difference in the verdict between the two decisions, namely verdict number 113 / Pid.Sus / 2020 / PN.Tsm with a verdict of 8 years and a verdict number 114 / Pid.Sus / 2020 / PN.Tsm, whose verdict is nine years and which triggers the emergence of criminal disparities, in this case, are the two decisions that have the same charges.

In the case of narcotics crime that has been terminated in the Tasikmalaya District Court, there is a criminal verdict that is almost the same with other evidence. The case was registered with case number 113 / Pid.Sus / 2020 / PN.Tsm with case number 114 / Pid.Sus / 2020 / PN.Tsm. In the first case, evidence was obtained in the form as follow: 1 (one) clear plastic package containing shabu-shabu wrapped in black duct tape, 1 (one) white straw inside containing clear plastic containing crystal methamphetamine, 1 (one) black Asus Zenfone brand cellphone along with sim card 082217410033, 1 (one) black plastic bag inside contains 1 (one) black wallet in which there is 1 (one) large clear plastic inside containing shabu-shabu, 1 (one) pack of magnum filter cigarette inside there are 33 (thirty-three) clear plastic packages containing crystal methamphetamine, 1 (one) pack of magnum filter cigarette traces inside, there are 20 (twenty) clear plastic packages containing shabu-shabu, 1 (one) spoon made of straw and 1 (one) digital scale. While in the second case, evidence was found that 1 (one) box of used shin zui soap contained 1 (one) large size clear plastic package containing shabu-shabu and 9 (nine) small clear plastic packages containing shabu-shabu, 1 (one) black and white Xiaomi 4X cellphone with sim card number 082119253387. These two decisions are one case whose case model is separated by the court. This difference becomes prominent when there are no clear verdict guidelines for imposing crimes that are adjusted to the evidence's size.

2. Discussions

a. Regulation of Criminal Disparities in Criminal Procedure Law in Indonesia

According to Muladi, the first source of decision disparity is the law itself. In Indonesia's positive legal system, judges have the freedom to choose the type of crime (*strafsoort*) they want. Related to the formulation of alternative criminal threats, for example, the threat of

¹⁰ Binsar Gultom in Indonesia Corruption Watch, concerning "Kualitas Putusan Hakim Harus didukung Masyarakat, "http://www.antikorupsi.org/id/content/kualitas-putusan-hakim harus-didukung-masyarakat, accessed on 10 September 2020.

¹¹ Harkristuti Harkrisnowo, "Rekonstruksi Konsep Pemidanaan; Suatu gugatan Terhadap Proses Legislasi dan Pemidanaan di Indonesia", Teks Pidato Pada Upacara Pengukuhan Guru Besar tetap Dalam Ilmu Hukum Pidana, Fakultas Hukum Universitas Indonesia, di Balai Sidang Universitas Indonesia, Hal. 7-8. 2003.

¹² *Ibid*,

¹³ Deliani, "Prisonisasi dan Masalahnya dalam Sistem Pemasyarakatan", *Jurnal Non Eksakta- HEKSPI*, Vol. 2 (2) : 60. 2010.

imprisonment or fines. Its means that the Judge has the freedom to decide which of the crimes he deems most appropriate. Also, judges have the freedom to determine if the punishment's severity (*strafmaat*) to be imposed because what is stipulated in the law is the maximum and minimum. Besides the minimum and maximum, in each article, the criminal act is punishable by a maximum punishment, which varies from one article to another.¹⁴

The character of judges who are free and impartial is a universal provision in a judicial system. The administration of the judicial system in Indonesia is carried out by judicial institutions, namely by way of examinations in court sessions led by judges. In criminal law administration, judges are active by asking questions and giving opportunities to defendants whom legal counsel may represent to ask witnesses and public prosecutors to obtain material truth. A judge will determine the fate of the next defendant utilizing his decision because, in essence, it is the Judge who exercises the jurisdiction of the court for the sake of the implementation of the proper judicial functions.¹⁵

The freedom that a judge has in deciding cases is limited by statutory regulations (criminal procedure law), as regulated in the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP). Article 183 KUHAP, "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he is convinced that a criminal act occurred and that the defendant was guilty of committing it." Thus, judges in deciding cases are given freedom but are given a limit to make decisions based on a minimum of two pieces of evidence. It means that in deciding a case, a judge must fulfill two or more pieces of evidence submitted during the trial examination. Thus, there is a prohibition against judges to decide only based on the conditions stipulated by law.¹⁶

In deciding a case, a judge is subject to Article 197 of the Criminal Procedure Code. Namely, the Judge must consider the severity or lightness of the sentence imposed on the accused through material evidence in court to support the conclusions in the Judge's consideration.¹⁷

Furthermore, the regulation regarding criminal disparity is also contained in Article 24 paragraph (1) of the 1945 Constitution, which provides a legal basis for judges' power, namely, the judicial power is an independent power to administer the judiciary to enforce law and justice. Article 24, paragraph (1) of the 1945 Constitution guarantees the judiciary's freedom as an independent institution, including judges' freedom in imposing crimes.¹⁸

So far, the criminal laws and regulations do not provide strict guidelines for punishment, which are the basis for judges to pass sentences. Judges only use the law as a guideline for granting crimes, namely the maximum and minimum guidelines. In connection with this matter, judges' role is crucial in granting crimes because judges must concretize criminal sanctions in regulation by giving penalties to certain people. Therefore, the guidelines for the granting of crimes should be explicitly stated in the law so that judges in their freedom to impose decisions are not arbitrary.¹⁹

Judges have the freedom to sentence a defendant who is proven to have committed the act he is accused of. Provisions regarding the time to carry out a sentence are contained in Article 12 paragraph (2) of the Criminal Code, namely imprisonment for a specified period of at least 1 (one) day and a maximum of 15 (fifteen) consecutive years. Then in Article 12 paragraph (4) of the Criminal Code also stipulates that imprisonment for a specific time may not exceed 20 (twenty) years. Likewise with imprisonment as regulated in Article 18 paragraph 1 of the Criminal Code, namely imprisonment of at least 1 (one) day and a maximum of 1 (one) year, whereas in Article 18 paragraph (3) of the Criminal Code it is stipulated that confinement is

¹⁴ Muladi and Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung: Alumni, 2005) 56-57. 2005.

¹⁵ Anwar Yesmil and Adang, *Sistem Peradilan Pidana* (Bandung: Widya Padjajaran, 2009), 65.

¹⁶ Bertin, Analisis Disparitas Pidana Dalam Kasus Pemerkosaan, *e Jurnal Katalogis*, Vol. 4 (11), (2016): 7.

¹⁷ Nimerodi Gulo and Ade Kurniawan Muharram, "Disparitas dalam Penjatuhan Putusan", *Jurnal Masalah-Masalah Hukum*, Vol.47 (3), (2018): 215

¹⁸ *Ibid*, 216.

¹⁹ Indung Wijayanto, "Disparitas Pidana Dalam Perkara Tindak Pidana Pencurian Biasa Di Pengadilan Negeri Kota Semarang", *Jurnal Ilmiah Ilmu Hukum QISTIE*, Vol. 7 (1), (2014): 223.

prohibited from time to time. More than 1 (one) year and 4 (four) months. Article 30 of the Criminal Code states that a minimum fine of three rupiahs and seventy cents is imposed. If the fine is not paid, it is replaced by imprisonment, and the duration is at least 1 (one) day and a maximum of 6 (six) months.

Between the disparity of crime and the freedom of judges in making decisions, the two are related. The freedom of a judge to decide concerning a case is an absolute thing that a judge owns. It is regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, namely that judges have to adjudicate cases with the dimension of upholding justice and law. In the provisions of Article 2 paragraph (4), Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, it is determined that "Judiciary is carried out for the sake of the Almighty God." Due to these provisions, judges must use their conviction in hearing and deciding cases in addition to using statutory regulations.

b. Factors of Criminal Disparity Against Judges' Decisions in Narcotics Crime Cases in Tasikmalaya City.

Factors that result in a disparity in judge decisions are factors that originate from within the Judge or the panel of judges themselves, both internal and external, which cannot be separated, because they have been fixed as an attribute of someone who is called a judicial person (human equation) or influence. Outside. This factor is closely related to criminal disparities and is the most crucial study object that needs attention. According to Soerjono Soekanto, in his theory of Legal Effectiveness, he explains the factors causing criminal disparity by judges, namely internal factors of judges such as social factors, educational factors; temperament factor; age factor; gender factor. External Factors of the Judge, namely factors outside the Judge himself, are mental and physical health conditions, such as the defendant's background and the defendant's reason to commit a criminal act.²⁰

The perpetrator's character or behavior factor, where the perpetrator behaves well or is polite in court, will be given a lighter sentence, but if the perpetrator is rude in court, he will be given a heavier sentence.

Legal factors, meaning whether the perpetrator has been convicted or punished in court or not, the Judge will consider the sentence's severity.

The factor that can lead to criminal disparities in the absence of criminal guidelines for judges in imposing crimes. Sudarto said that the guidelines for granting crimes would make it easier for judges to determine the conviction once it is proven that the defendant has committed the act he was accused of.²¹

The factors for the narcotics crime case in the decision with Case Number 113 / Pid.Sus / 2020 / PN.Tsm. And the verdict with Case Number 114 / Pid.Sus / 2020 / PN.Tsm, which has been investigated, namely the existence of factors from the evidence found from each of the defendants supported by the defendant's role in committing narcotics crime. The defendant in the verdict Number 113 / Pid.Sus / 2020 / PN.Tsm has a role as the dealer. Defendant consciously agreed to become a methamphetamine drug dealer and carried out his actions the defendant in verdict Number 113 / Pid.Sus / 2020 / PN.Tsm was not under pressure to do this work. The defendant in the verdict with case number 114 / Pid.Sus/2020/PN.Tsm also collaborates with other people too. For the defendant in a decision with case number 114 / Pid.Sus / 2020 / PN.Tsm. He also has the same role as a dealer. In carrying out his action, the defendant in the decision with case number 114 / Pid.Sus / 2020 / PN.Tsm asked the defendant in the decision with Case Number 113 / Pid.Sus / 2020 / PN.Tsm to deliver a package of methamphetamine-type drugs, and the defendant in decision Number Case 113 / Pid.Sus / 2020 / PN.Tsm agreed.

In this drug crime case, the verdict was Case Number 113 / Pid.Sus / 2020 / PN.Tsm and the decision with Case Number 114 / Pid.Sus / 2020 / PN.Tsm, both of which were charged

²⁰ Wildan Suyuthi Mustofa, *Kode Etik Hakim*, (Jakarta: Prenadamedia Group), 168. 2013.

²¹ Kurnia Dewi Anggraeny, *op.cit*, 233

with the same article, namely Article 114 paragraph (1) Law No. 35 of 2009 concerning Drugs and also the role of the defendant in committing criminal offenses of narcotics, both of which are dealers according to Law No. 35 of 2009 concerning Narcotics in Articles 111, 112, 114, and 116 regarding the provisions of the criminal law should be the same. However, here the Judge pronounced it differently by considering the evidence of each defendant.

Table 1. Evidence

Case Number	Evidence	Criminalization
Verdict number 113/Pid.Sus/2020/PN.Tsm	14,7564 gram	8 Years
Verdict number 114/Pid.Sus/2020/PN.Tsm	27,1562 gram	9 Years

By looking at the evidence in the two decisions mentioned above, there are differences which are used as the basis for consideration by the Judge to make different decisions even though the position or role of the two defendants in committing the crime of narcotics is the same and according to Law, No. 35 concerning Narcotics must be given the same criminal provisions. So this is where the disparity of crime in the verdict with case number 114 / Pid.Sus / 2020 / PN.Tsm and decision with Case Number 113 / Pid.Sus / 2020 / PN.Tsm occurs, but it does not harm the defendant and the community. In general. After observing several decisions, it turns out that the large or small amount of evidence has a very significant effect on the punishment to be imposed.

Henceforth, the factors causing disparity can also be seen in the burdensome and mitigating matters listed in a Court Decision and are also taken into account by the Judge in determining the severity of the sentence. Matters that are burdensome and mitigate for the defendant's actions in the decision Number case 114 / Pid.Sus / 2020 / PN.Tsm and in the decision Number Case 113 / Pid.Sus / 2020 / PN.Tsm.;

The burdensome things:

- The defendant's actions were contrary to the government's program in efforts to combat the distribution and abuse of narcotics and illegal drugs;

The things that lighten up:

- The defendant behaved politely during the trial;
- The defendant admitted and regretted his actions;
- The defendant is still young, so he still has ample opportunity to repair his dressings.

For burdensome or mitigating things, the two decisions do not make a factor causing the disparity in the two cases' decisions.

V. Conclusion

1. The regulation of criminal disparity in criminal procedural law in Indonesia is stated in Article 197 of the Criminal Procedure Code, namely that judges in deciding cases must have their considerations in determining the weight or lightness of the sentence to be imposed on the defendant through material evidence in court to support the conclusions in the Judge's consideration, then the freedom he has. In deciding cases, judges are also limited by statutory regulations (criminal procedure law), which have been regulated in the Criminal Procedure Code Article 183 KUHAP.
2. The factor of the occurrence of criminal disparities against Decision No. 113 / Pid.Sus / 2020 / PN.Tsm and Decision No. 114 / Pid.Sus / 2020 / PN.Tsm in the case of criminal offenses for narcotics, namely the difference in evidence from each defendant which made the basis for the Judge's consideration to make a different decision even though

the role of the defendant in committing the crime was the same and according to law No. . 35 of 2009 concerning Narcotics regarding the criminal provisions should be the same.

VI. Suggestions

When deciding on a case, there are criminal disparities in it, and then it must be based on objective considerations.

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