

The Phenomenon of Disparity in a Criminal Case**Budi Wijaya Hamdi**

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KeywordsPhenomenon, Disparity,
Criminal Cases**Abstract**

The phenomenon of disparities in criminal cases is increasingly common, this is caused by several underlying factors. In deciding a case, a judge must be objective in deciding the case he is proceeding over so that the public's trust in the law remains pure without intervention by any party. This research aims to determine the factors that underlie disparities in criminal cases as well as efforts to overcome the disparity phenomenon. This research uses normative legal research methods and to analyze using qualitative descriptive analysis. The research results show several factors including: 1) Background, 2) Facts of the Trial, 3) Requisition or Prosecutor's Demands and 4) Mens Rea or a person's inner intention in committing a crime. Meanwhile, efforts to overcome this phenomenon include guidance provided by the Supreme Court to judges. Judges must also adhere firmly to the law on judicial power and pay attention to Article 54 of Law No. 1 of 2023 concerning the Criminal Code (KUHP). and supervision is carried out so that the judge in leading a trial process does not have interference from any party who is not responsible.

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**INTRODUCTION**

The judge is the organ of the court that is considered to understand the law, who is given the obligation and responsibility to make the law run fairly and impartially (Putra, Sepud, & Sujana, 2020) . Judges not only act as mouthpieces of the law, but judges also act as discoverers of law (rechvinding), in accordance with the values of Pancasila (Arifin, 2023) . Therefore, the judge has a central position. This is because decisions regarding punishment have far-reaching consequences, both directly affecting the perpetrator of the crime and society at large (Bhakti, Putrajaya, & Pujiyono, 2017) . So it is said that, because in making decisions, judges must not receive interference from any party. This is an embodiment of the Judicial Power Law, which states that judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society (Pranata, Indarti, & Indraswari, 2017) .

Judicial power is independent power in the process of administering justice and law enforcement practices. In this case, judges who are figures of law and justice or often people say that judges in carrying out judicial functions are the last bastion of justice have the freedom to choose the type of punishment (strafsoort) they want in connection with the use of alternative systems for criminal threats in law. -the law and chooses the severity of the punishment (strafmaat) that will be imposed because determined by the law is the maximum and minimum (Hatirindah, 2020) .

The judge's position is strong because his position is constitutionally guaranteed by the 1945 Constitution of the Republic of Indonesia, in Chapter IX Article 24 concerning Judicial Power, so that it is within the maximum and minimum limits (Barhamudin & Bustomi, 2019) .

The judge is free to move to find the right sentence. This opportunity has the consequence of disparity in punishment. In judicial practice, criminal disparities often occur not only regarding the length of the sentence imposed but also regarding the type of crime

and the practice of implementing the crime (Hasan & Firmansyah, 2020) . The occurrence of disparities in punishment that are not based on rational grounds or reasons can have a negative impact on the law enforcement process, namely the emergence of a sense of dissatisfaction with the public as seekers of justice which ultimately causes a loss of public trust in the criminal law administration system (Sugiono, Setyorini, & Yudianto, 2021) .

The criminal laws and regulations that have been made so far do not provide strict guidelines for awarding sentences which are the basis for judges in imposing sentences on defendants. The existing law is only used as a guideline for maximum and minimum sentences. Therefore, guidelines for awarding sentences should be explicitly stated in the law to avoid arbitrariness by judges in handing down their decisions.

Sentencing Disparity is an important topic in criminal law science. Disparity in punishment means that there are differences in the amount of punishment imposed by the court in cases that have the same characteristics . According to Harkristuti Harkrisnowo, who states that criminal disparities can occur in several categories which can be seen from criminal acts with the same characteristics, having the same level of seriousness, sentences imposed by judges and sentences imposed by different judges for the same crime (Zilvia & Haryadi, 2020) . From the brief description above, the author raises the title "The Phenomenon of Disparity in a Criminal Case" with the hope that the author can contribute to the reform of law enforcement in Indonesia.

This research aims to provide a new perspective on a legal phenomenon that often occurs and also to add to the scientific knowledge for everyone who reads it.

RESEARCH METHODS

This type of research is seen in terms of the aim of legal research, namely normative legal research, while the report is descriptive analysis. The legal research that will be carried out in the preparation of this legal writing is normative legal research or library legal research, namely research carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. These materials are then arranged in a systematic and planned manner, studied and then a conclusion is drawn. The object of normative legal research is normative legal research which takes legal issues as a system of norms used to provide justification for prescriptions about a legal event. In normative legal research, the center of study is the norm system . What can be used as an object in normative research is secondary data in the form of primary legal materials and secondary legal materials. This type of research is normative legal research, so the approach used is a statutory approach and a conceptual approach. A legislative approach is taken to analyze the statutory regulations that regulate the freedom of judges and the authority of judges. This research also uses a comparative approach, to see how the same regulation produces different criminal decisions. So that later similarities and differences will be found which will help in the analysis process. A conceptual approach is used to analyze the phenomenon of disparities in a criminal case¹¹.

RESULTS AND DISCUSSION

Disparity Factors & Efforts to Overcome the Disparity Phenomenon

A. Disparity Factors in Criminal Cases

Indonesia is a country based on law, and judges are given the freedom to decide cases. In other words , judges are criminals and cannot be intervened by any party. Judges as state judicial officials have the power to receive, investigate and decide cases submitted to them. In essence, judicial duties have two meanings. In other words, it means upholding justice and upholding the law (Rais, 2017) .

Unequal punishment is the provision of different sentences for cases with similar legal facts. The absence of clear legal considerations and justifications that can be responsible for different levels of punishment in cases that have similar characteristics has in fact become a problem among the general public, especially among justice seekers. It gives rise to doubts (Justiciabelles). It is important to note that, in principle, not all disparities in punishment constitute unjust inequalities.

At a certain point, disparity in punishment is actually necessary to ensure justice (Abdurrachman, Nugraha, & Majestya, 2020) . It is important to realize that each case has its own characteristics (specificity/specificity of the case) and to consider each case in a relaxed manner (doktor & mahrus, nd) . However, in practice, the public and justice seekers often find that cases with similar characteristics are judged and punished differently. For example, a drug case where the type and amount (weight) of drug evidence is the same , the role of the defendant is the same, and the crime is the same. However, different punishments and/or punishments were imposed.

Determining the level of punishment based on objective assessments and not based on subjective assessments is basically consistent with the principles of transparency and openness (Abas et al., 2023) . Adherence to the principles of transparency and openness in criminal prosecution is important because it makes it easier to understand the severity of the punishment. In this way , judges can provide clear reasons and justifications and assess more objectively the level of criminal threat posed to the perpetrator. A criminal system like this is very necessary to create stronger law enforcement, accountability, transparency and integrity (Hasibuan & SH, 2021) .

In his book *Sentencing and Criminal Justice*: Andrew Ashworth states that "discrepancies in decisions cannot be separated from the judge's discretion in imposing sentences in criminal cases." In Indonesia, disparities in punishment are also often associated with the independence of judges. Professor of FH-UI, Harkristuti Harkrisnowo, stated that: "There are criminal disparities in law enforcement because of the reality of criminal disparities. It is not surprising that the public questions whether judges/courts have really carried out their duties to uphold law and justice? Viewed from a sociological perspective, the condition of criminal disparity in public perception is evidence of the absence of social justice (Manurung, Syahrin, Ablisar, & Sunarmi, 2021) . Unfortunately, from a formal legal perspective, this condition cannot be considered to have violated the law. However, people often forget that the element of "justice" must basically be attached to the decision given by the judge" (HADMOKO, Muchamad Iksan, & Bambang Sukoco, 2014) .

Disparity occurs because the judge, when deciding on a case, sees that there are significant things so that there is a disparity in a criminal case and these things include the following:

1. Background Factors

Background is a very important thing for the panel of judges in assessing a criminal case. Seeing a person's background in committing an act that is against the law is a form of anticipation carried out by the judge in deciding a case, which is to see whether he is a recidivist of a criminal act. , is someone who is affiliated with an international network in terms of criminal acts committed and so on. This can be used to anticipate a dramatization created by a drug abuser or to construct a lie. This is also in accordance with the ratio decidendi theory, meaning that the judge's considerations in arriving at a decision are the considerations of the panel of judges which are based on the facts contained in a trial process.

2. Trial Facts

same case , this is also dominated by the facts discovered during the trial process, whether facts obtained from evidence of a criminal act committed or from evidence in the form of statements from witnesses or experts who presented in the resolution of a criminal case.

The panel of judges in presiding over a criminal case trial is also required to be objective in deciding a criminal case, this is what makes it often happen that a criminal case trial has differences or disparities in it, especially in the punishment sanctions in the form of imprisonment (Bhakti et al., 2017) .

The facts of the trial are also things that are taken into account by the panel of judges when deciding on a case. This is also in accordance with the ratio decidendi theory, meaning that the judge's considerations in arriving at a decision are the considerations of the panel of

judges which are based on the facts contained in a trial process. Ratio decidendi is one of the benchmarks for assessing the quality of a judge's decision.

3. Requisitoir / Prosecutor's Demands

Requisitoir is a prosecution in the process of examining a criminal case in court. According to Darwan Prints, the definition of requisitoir is a letter made by the public prosecutor after the examination is complete and then read and handed over to the judge and defendant or their legal advisor (Al Yuhri, 2023). The contents of the requisition or legal demand letter contain the public prosecutor's conclusion based on the evidentiary process, namely whether the provisions or articles charged against the defendant are proven or not. The basis for the requisitoir itself is contained in article 182 paragraph (1) of the Criminal Procedure Code (KUHAP), where the essence of the requisitoir itself contains juridical facts which will later become material for consideration by the panel of judges when deciding on a case.

4. Mens Rea or Evil Intentions

Sentencing conditions include objective and subjective elements. The objective element is in the form of a criminal act and the subjective element is in the form of criminal liability (Marentek, 2019). Criminal acts (actus reus) include physical acts, acts that are prohibited according to law and if violated will result in criminal sanctions. Mens rea is one of the supporting factors in which a person can be held criminally responsible for what they have done or not, and can also be taken into consideration by the panel of judges when deciding a criminal case. Mens rea is a mental element while Actus reus is a physical element. This is based on the principle of "actus non facit reum nisi men sit rea" which means that no action can be subject to criminal sanctions if there is no malicious intent in it.

B. Efforts to overcome the phenomenon of disparities

The phenomenon of disparity is increasingly common in criminal trials, this gives rise to many problems that can arise in the future, this can also give rise to indications of the existence of a legal vacuum in the view of experts in the field of law itself. Especially in Indonesia, enforcement and enforcement of the law is often encounter obstacles related to social development. Several incidents show how difficult it is for law enforcement and judicial authorities to find ways to ensure that laws are consistent with existing social norms. However, the development of society is faster than the development of legal regulations, so that social development becomes the starting point for the existence of regulations. To be able to create a harmonious and orderly social life, a legal system is needed. In fact, the laws and regulations issued do not cover all cases that occur in society, making it difficult for law enforcement officials to resolve these cases.

Decisions containing criminal sanctions are one way to tackle crime, therefore a humane approach must be taken. A humanistic approach is an approach that considers human values in addition to providing criminal sanctions to perpetrators of criminal acts. This is different from the criminal law introduced in Indonesia which is based on the theory of absolute retribution. Therefore, sentencing guidelines can be created to reduce disparities.

Sentencing guidelines are intended as a guide or basis for judges in making and implementing decisions in the cases they handle. These sentencing guidelines are basic regulations that are expressly or unequivocally made in criminal law so that they can become part of criminal law regulations. The existence of these sentencing guidelines makes it easier for judges to decide what criminal sanctions to impose based on the facts revealed in court. If the sentencing guidelines are objective and contain facts that are relevant to the defendant or perpetrator of the crime. In law, this is also in accordance with what is contained in the Criminal Code (KUHP) no. 1 of 2023, which in article 54, namely that in punishment, you must pay attention to:

- a) The form of guilt of the perpetrator of the crime;
- b) Motive and purpose of committing a criminal act;
- c) The inner attitude of the perpetrator of the crime;
- d) Criminal acts are committed planned or unplanned;
- e) How to commit a criminal act;
- f) The attitude and actions of the perpetrator after committing the crime;

- g) Life history, social conditions and economic conditions following criminal acts;
- h) The influence of crime on the future of criminals;
- i) The Effect of Crime on the Victim or Victim's family;
- j) Forgiveness from the Victim and/or the Victim's family; and/or
- k) The value of law and justice that lives in society.

In anticipating the occurrence of disparities, the Supreme Court as the highest judicial institution in a country should also provide guidance to judges, especially young judges, with the aim of always being able to uphold the values of justice, certainty and usefulness of the law and not taking sides with parties. certain and senior judges can give advice to junior judges so that the trial process can be neutral and impartial, as well as the importance of supervision carried out by the supreme court for each judicial institution so that judges in presiding over trials are not interfered with by unscrupulous individuals. not responsible.

CONCLUSION

The phenomenon of disparity in criminal cases is a natural thing and often occurs, where disparity occurs if it is based on logical reasons and reasons that are accompanied by philosophical, historical, sociological and juridical grounds and is not caused by intervention from the party involved. Irresponsible or even just from the judge's subjective analogy. √Efforts to overcome disparities in criminal cases are a positive step to create a sense of public trust in legal justice for all levels of society and are used as good material to create good regulations in the future (ius constituendum).

The guidelines as stated in Article 54 of the Criminal Code (KUHP) No. 1 of 2023 must also serve as a guide for judges in leading trials and serve as a reference in deciding a criminal case. Apart from that, the Supreme Court of the Republic of Indonesia (MA) must also take part in developing young judges in leading trials so that they are able to prioritize human values so that laws can be created that can provide justice, certainty and legal benefits.

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