

Legal Review on the Disparity of Judges' Decisions in Criminal Cases

*Siti Nurazizah¹, Vina Humaira²

^{1,2}Law Department Nusa Putra University, Indonesia

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ABSTRACT

Every country that Democracy certainly has one of the most important characteristics, namely the independence of the judiciary and is responsible. The existence of judicial power in Indonesia has been justified. Law of the Republic of Indonesia Number 48 of 2009 states that judicial power according to the 1945 Constitution of the Republic of Indonesia is an independent power exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court, to administer justice to uphold law and justice. Mukti Arto in his book entitled "Ideal Conception of the Supreme Court" states that the existence of an independent judiciary is very important for three reasons: (a) the Court is the guardian of the Constitution; (b) Free trials are an element of a democracy; (c) Courts are the source of the rule of law.

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Corresponding Author:

Name: Siti Nurazizah

Institution: Law Departement Nusa Putra University

Email: siti.nurazizah_hk21@nusaputra.ac.id

1. INTRODUCTION

One of the objectives of the law is to provide protection for human interests and to maintain social order. To achieve this goal, it is necessary to have a legal system along with official bodies that function in supervising the applicable legal system. Judicial power is one form of implementation of the official body in charge in court by receiving, investigating, assessing, and resolving all cases. In general, there are 3 (three) streams attached to judges when making decisions. The first stream is legism which argues that law is sourced from law. In this flow, judges only decide cases based on the law. However, this flow turns out to have a drawback, namely that there are legal problems that cannot be solved resolved by law that has been established. Therefore, a second school in the form of Freie Rechtslehre emerged [1].

The Freie Rechtslehre school argues that judges can create laws (judge made law) because judge decisions are considered dynamic and can follow developments that continue to change in society. But in the end, this school was deemed unable to achieve legal certainty so that a new school was born again. This newly emerged school is called the Rechtsvinding School (legal discovery). This school is a development of the flow of legism influenced by the Freie Rechtslehre school which suggests that the position of judges is "free but bound".

This study will look more deeply into the factors that can lead to the emergence of judges' disparity in deciding a criminal case and formulate how this can be overcome.

Disparity is difference. Thus, the disparity of judges' decisions is defined as the differences found in judges' decisions when they decide on a similar case.

2. LITERATURE REVIEW

In the Indonesian legal system, the Supreme Court has all judicial powers. Because the Supreme Court is the last bastion of the rule of law, the Supreme Court must be able to legally and technically guarantee the rule of law.

Hamda Zoelva in his research states the point of view of the rule of law or the exercise of power in the field of justice in democracy, from the point of view of In the implementation of justice, the state of law is intended as a nation that provides justice as an independent force, respects human rights and the principles of the rule of law (due process of law) [2].

Article 1 paragraph (8) of the Criminal Procedure Code states, "judges are state judicial officials who are authorized by law to try". [3] in his research highlights that as if the concept of freedom of independence of judicial power has reached an agreement, the main issues of the judiciary are considered have been completed. In fact, the next problem arises, if the freedom of the judge's power is misused, which has implications for the arbitrariness of the judicial power which in turn will harm the people seeking justice [3].

Shtreet S. and J. Deschnes said that the independence of judicial power, hereinafter referred to as the term independence, has long been considered necessary in the judicial system, but the concept has not received sufficient attention in practice. However, the independence of the judiciary as a concept has received full attention and has become the subject of study [4].

3. METHODS

This research was written using a normative legal research method which was carried out by examining library materials in the form of books, articles, and expert opinions. This research is intended to reveal the legal basis used by judges as the basis when deciding cases and how to base them impact on the resulting decision.

This study also intends to reveal whether the legal basis can bring results in the form of a judge's decision at the point of justice.

4. RESULTS AND DISCUSSION

4.1 *The Cause of Legal Disparities in Criminal Cases*

Article 1 paragraph (11) of the Criminal Procedure Code states that a court decision is a judge's pronouncement made in a trial, either in the form of conviction or freedom, or throughout the judicial process that we can escape from the rules. However, there are still many decisions made by judges against prisoners who have not received justice in society, because judges still find discrepancies in imposing crimes.

In the Indonesian legal system, judges have the principle of freedom in accordance with Law Number 48 of 2009 concerning Judicial Power. The law states that the judiciary is the power of an independent state to administer justice to uphold law and justice.

The principle of freedom in justice is known as the principle of legal reasoning or the law of judges (legal reasoning). Judges are the judicial authorities of the state and have the authority to receive, investigate, and hear cases before them.

But until now, the application of law enforcement in Indonesia in dealing with criminal cases or criminal acts such as theft, rape, corruption, and other criminal acts, judges' decisions are still often seen as discriminatory, inconsistent, and do not provide objective parameters. So that people often assume that judges still often cause disparities in deciding a case.

Criminal disparity (disparity of sentencing) is non-compliance with similar crimes (same offenses) or offenses of comparable seriousness without explicit justification. This is the application of the same punishment. In addition, criminal inequalities without reference to "legal categories" may occur with the punishment of individuals who commit crimes together [5].

Harkristuti Harkrisnowo as Professor of the Faculty of Law, University of Indonesia, stated that criminal disparity (disparity of sentencing) relates to differences in criminal penalties for cases of similar or equivalent seriousness, without clear reasons or justifications [6].

When criminal disparities in law enforcement occur, many people question

whether judges have high integrity and can truly carry out their duties in upholding law and justice. Because criminal disparity will be considered a bad view of the absence of justice (societal justice). However, when viewed from a normative juridical point of view, this condition is not considered a violation of the law. Often people forget that the element of "fairness" basically must be attached to the decision handed down by the judge.

Harkristuti Harkrisnowo, stated that criminal disparities can occur in several categories, namely:

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

There are many factors that can cause criminal disparity. In the end, it is the judge who will cause a criminal disparity because the final decision is in their hands. There are several examples that the disparity of judges' decisions is still common in Indonesia.

For example, in the case of the crime of theft in the same way and the consequences and the amount of loss are the same. Although the law used by judges in similar cases is the same law, for example, Article 362 of the Criminal Code, it is possible that the decisions handed down in these 2 (two) cases create disparities. This can happen because of the *nulla poena sine lege* principle which limits judges to impose criminal sanctions based on the doses that have been determined in the legislation.

Furthermore, the problem of criminal disparity that continues to occur can also be caused by the distance between sanctions minimum criminal sanctions with maximum criminal sanctions in too large a dose.

In addition, the process of forming laws and regulations also affects the occurrence of criminal disparity, because

there is no standard in formulating criminal sanctions.

4.2 Solutions in Minimizing Disparities in Judges' Decisions in Criminal Cases

One of the efforts to minimize the disparity of judges' decisions is by making sentencing guidelines. Although the severity and severity of a sentence is under the authority of judges of first instance and appeal, in some cases the Supreme Court Justices have made corrections to the verdicts on the grounds of proportional punishment.

To see this further, we need to review the substance of the existing law. The Criminal Code (hereinafter referred to as the Criminal Code), is the law that regulates criminal cases. We need to review whether the Criminal Code has formulated the urgency of the goals and guidelines for sentencing. Sentencing guidelines are basic provisions that provide direction for deciding the implementation of punishment. This can be used as a guide for judges in sentencing.

The Draft Law on the Criminal Code is a manifestation of the reform of criminal law in Indonesia. Sociologically, there are many articles that are deemed inadequate to the problems that occur in the community. In addition, advances in science and technology have made various criminal arrangements in the Criminal Code considered inadequate and left behind by the times.

Criminal law reform is defined as a comprehensive reform, covering 3 (three) aspects, namely; (1) Legal substance, (2) Structure law, and (3) legal culture.¹⁰ As has been written in Article 52 of the 2019 KUHP Bill, sentencing aims to: a) Prevent crime by enforcing legal norms for the protection of society; b) Providing socialization to prisoners through coaching and guidance to become better and more useful human beings; c) Resolve disputes caused by criminal acts, to regain balance, and provide a sense of security and stability; d) Cultivate a sense of liberation from regret and guilt.

In addition to Article 52, the sentencing guidelines are also written in Articles 53 and 54 of the 2019 Criminal Code Bill. Article 53 states that: 1) When deciding a case in criminal law, the judge is obliged to uphold law and justice; 2) In upholding justice, if there is a conflict between justice and legal certainty, the judge needs to prioritize justice.

According to Article 54 of the 2019 Criminal Code Bill, there are several things that must be considered by judges in deciding criminal cases, namely: (1) Errors of perpetrators of criminal acts; (2) The motivation and purpose of the perpetrators of the crime; (3) The inner attitude of the perpetrator of the crime; (4) Crimes committed based on a prior plan or not based on a plan; (5) The method used by the perpetrator of the crime when committing the crime; (6) Circumstances and behavior of perpetrators of criminal acts after committing a crime. g) The social situation of the perpetrator of the crime; h) The impact on the future of the perpetrator of the crime; i) The impact on the victim or the victim's family; j) Forgiveness by the victim and/or his family; And/or k) The value of law and justice for living in society.

5. CONCLUSION

From the explanation described above, we can see that the guidelines for punishment or what is known as the guidance of sentencing have an important role in the position of the criminal law system in Indonesia.

The sentencing guidelines are one of the efforts that can be applied by judges in deciding criminal cases. With good sentencing guidelines, judges are expected to be able to decide criminal cases in accordance with the purpose of the law, namely upholding justice. This will certainly reduce the level of disparity in judge decisions in criminal cases.

Guidelines for punishment can be realized through the Draft Criminal Law. Apart from being one of the steps in minimizing the disparity of judges' decisions,

the sentencing guidelines also turned out to be intended as a controlling tool so that

judges can make decisions in a more focused manner.

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