

Unlimited Discretion, Eroded Certainty: Reformulating Criminalization of Narcotics Crime in Indonesia

¹Nofalinda Arianti, ²Maryano, ³Supot Rattanapun

^{1,2}Jayabaya University, Indoensia, ³Rajamangala University Of Technology Krungthep, Thailand

[1nofalindaa@yahoo.com](mailto:nofalindaa@yahoo.com), [2maryano.myn@gmail.com](mailto:maryano.myn@gmail.com), [3Supot.r@mail.rmutk.ac.th](mailto:Supot.r@mail.rmutk.ac.th)

ABSTRACT

Sentencing in narcotics crime cases in Indonesia remains problematic, particularly concerning legal certainty. The striking disparity in court decisions – despite similar legal facts – reflects the absence of standardized sentencing parameters. Furthermore, the wide scope of judicial discretion without objective guidelines increases the risk of injustice in criminal adjudication. This study aims to examine the realization of legal certainty in narcotics sentencing, analyze the role and limits of judicial discretion, and formulate the need for sentencing reform in Indonesia. Using a normative and empirical legal approach, the study analyzes 25 court verdicts and is supported by interviews with legal practitioners. The findings reveal that disparity and unregulated discretion contribute to systemic uncertainty in sentencing practices. Therefore, comprehensive reform is necessary, including binding sentencing guidelines, restricted judicial discretion, and strengthened rehabilitative approaches. This research contributes to the formulation of progressive criminal law reforms based on justice, proportionality, and predictability.

Keywords: Legal Certainty, Sentencing Disparity, Judicial Discretion, Narcotics Crime, Criminal Law Reform

Introduction

Narcotics crime is a form of extraordinary crime that has a broad and complex impact on society, the state, and the legal system (Hartanto & Ningrum Amin, 2021; Murtadho, 2018; Yunus et al., 2022). Based on data from the National Narcotics Agency (BNN), by 2023 there will be more than 3.6 million active drug users in Indonesia, with an increasing trend of 14.3% compared to the previous year. More than 47% of the inmates of correctional institutions in Indonesia are prisoners of drug cases, making drug crimes the largest contributor to the overcapacity of correctional institutions (Christiana & Runturambi, 2023). In addition, the 2022 Annual Report of the Indonesian Supreme Court shows that drug cases still dominate the types of general criminal cases handled by district courts throughout Indonesia (Mustafa, 2021).

However, in the practice of law enforcement, especially at the punishment stage, inconsistencies are often found in court decisions against drug offenders (Putra et al., 2022). The phenomenon of disparity in sentencing is increasingly highlighted when two defendants in similar cases - in terms of the amount of evidence, role, and social background - are sentenced to very different sentences by the panel of judges. This raises serious questions regarding the application of the principle of legal certainty, the principle of justice, and the principle of proportionality in the criminal justice system in Indonesia.

The urgency of this research lies in the need for a reassessment of the institutional and procedural aspects in the practice of drug crime punishment. This is because the striking disparity in sentencing not only reflects the weakness of the sentencing guideline system, but also indicates the uncontrolled use of judges' discretion, which has the potential to create structural injustice and undermine public trust in the judiciary.

The research gap that this study aims to fill is the lack of academic studies that simultaneously link three important elements: (1) legal certainty in the context of drug

sentencing; (2) judge discretion as the main source of disparity; and (3) the need for reform of a more adaptive and standardized sentencing system. Most previous studies have only addressed disparity or legal certainty separately, without building a comprehensive synthesis that can inform national criminal law reform policy.

Based on this background, the purpose of this study is to critically examine the application of the principle of legal certainty in the practice of sentencing drug offenders in Indonesia, analyze the role and limits of judges' discretion that contribute to sentencing disparities, and propose systemic reform measures in the formulation of more fair, proportional, and reliable sentencing guidelines.

The main contribution of this research is to provide a theoretical and empirical basis for the formulation of national sentencing policies that not only guarantee legal certainty, but also reflect substantive justice. In addition, this research enriches the academic discourse on the role of judicial discretion in Indonesian criminal law and provides practical recommendations for the reform of the progressive law-based drug sentencing system.

This research aims to provide a more in-depth and comprehensive understanding of the reality of the practice of punishment of drug offenders in Indonesia within the framework of legal certainty and substantive justice. Through the study of the disparity of punishment and the role of judicial discretion, this research is expected to identify systemic problems that hinder the realization of the principle of equality before the law in the context of narcotics cases.

Specifically, the main objectives of this research are: First, to examine the extent to which the principle of legal certainty is realized in the sentencing of drug crime cases. This analysis will examine the variations in court decisions that occur in similar cases and evaluate the extent to which these decisions are predictable and based on clear and consistent legal norms.

Second, to analyze the role and limits of judges' discretion in imposing criminal decisions, particularly in narcotics cases. Discretion is an important instrument in the justice system, but in practice it can be a double-edged sword if it is not accompanied by measurable guidelines or limits. This research will examine how discretion is used, and to what extent it contributes to unfair sentencing disparities.

Third, to formulate policy recommendations for reforming the criminalization system for drug offenses. This reform includes the need for the preparation of binding sentencing guidelines, the application of the principle of proportionality in sentencing, and the strengthening of normative and institutional frameworks to ensure legal certainty in line with a sense of public justice.

Through the achievement of these objectives, this research is expected to not only provide a theoretical contribution to the development of criminal law science, but also provide a practical basis for policy makers, the Supreme Court, and judicial institutions in directing the punishment system towards a more just, measurable, and accountable direction.

This research uses a normative juridical approach combined with empirical juridical, in order to obtain a comprehensive understanding of the dynamics of legal certainty, the practice of punishment disparity, and the use of judge discretion in narcotics crime cases (Budianto, 2020; Kirdyashova, 2023; Nalle, 2015).

The normative juridical approach is used to examine the positive legal framework that regulates the criminalization of narcotics crimes, including the provisions in Law Number 35 of 2009 concerning Narcotics, the Criminal Code (KUHP), and the 2020 Supreme Court Sentencing Guidelines. In addition, this approach also includes a review of legal doctrines and theories of legal certainty, justice, and judicial discretion which serve as a conceptual basis in analyzing field findings.

Meanwhile, the empirical juridical approach is used to evaluate how legal norms are implemented in practice, particularly through the analysis of court decisions and limited interviews with legal practitioners (Dempsey, 2017; Mohamed, 2016). This research emphasizes the implemented dimension of the law in the context of criminalization of narcotics cases.

The primary data source used consists of 25 court decisions in narcotics crime cases accessed from the Directory of Decisions of the Supreme Court of the Republic of Indonesia (period 2020-2024). The selection of decisions was based on the criteria of similarity in the type of criminal offense (user, courier, or dealer), the amount of evidence (range 0.1 to 5 grams), and the similarity in the structure of the indictment. Decisions were selected from various jurisdictions in Indonesia to reflect the diversity of judges' approaches in various regions.

Secondary data sources included laws and regulations, criminal law literature, national and international scientific journals, and the results of studies by relevant state institutions. To support the contextual analysis, semi-structured interviews were also conducted with three key informants: a district court judge, a public prosecutor, and a criminal law lecturer who actively advocates for reform of the punishment system.

Data analysis techniques were conducted using content analysis and comparative analysis. Content analysis was used to identify patterns of punishment, judges' legal arguments, and variables that influence the severity of the verdict. Comparative analysis was used to compare two or more decisions that were similar in terms of legal facts, but resulted in disparities in the final decisions.

All findings were analyzed within a theoretical framework using three main theories: (1) Legal Certainty Theory (Hans Kelsen) to evaluate the predictability of legal norms; (2) Substantive Justice Theory (Aristotle) to assess equality in legal treatment of similar cases; and (3) Judicial Discretion Theory which explains the limits of judges' authority in imposing fair decisions. With this approach and methodology, this research is expected to produce an analysis that is valid, objective, and can be replicated by other researchers to strengthen the scientific basis for reforming the punishment system in Indonesia.

Criminal Disparity: Juridical Facts that Challenge Legal Certainty

A review of 25 court decisions in narcotics crime cases shows a significant disparity in the type and severity of punishment imposed by judges, even when cases have similar factual elements. In one example, a defendant found to be storing 2.1 grams of methamphetamine was sentenced to 5 years' imprisonment, while in another case, a defendant with evidence of 2 grams of methamphetamine received 10 years' imprisonment. There is no clear legal argumentation as to why this difference occurred, other than the highly subjective considerations in the decision.

This phenomenon emphasizes the weak guarantee of legal certainty in criminal justice practice, especially in narcotics cases which are very sensitive socially and politically. In the legal system of a state of law (*rechtsstaat*), legal certainty is not only determined by the existence of written norms, but also by the consistency of the application of norms in court decisions (Akmal, 2021). Unfortunately, this is not reflected in many drug cases in Indonesia.

This disparity indicates that court decisions have not fulfilled the principle of equality before the law, namely that every person in conflict with the law must be treated equally in commensurate conditions. When decisions become unpredictable and cannot be justified by the principle of proportionality, public trust in the legal system will be further eroded. The absence of a standardized sentencing system is the fundamental cause of the emergence of inequality in the treatment of cases that should be legally equal.

Judge Discretion: A Dilemma between Independence and Accountability

Judges' discretion in the context of criminal law is indeed possible as part of efforts to adjust the law to the values of justice in concrete cases (Mustafa et al., 2020). However, in practice, this discretion is often uncontrolled and not balanced with standards that can be tested objectively. Many criminal drug decisions use considerations of "the defendant's feelings of guilt", "social impact in the neighborhood", and "family apology" as reasons to aggravate or mitigate the sentence (Petrucchi, 2002).

The problem arises when these considerations cannot be verified juridically and tend to reflect the personal values or even moral prejudices of the judge. In fact, discretion in law is not a value-free area, but must still be carried out in a rational, measurable and responsible legal corridor. Without strict restrictions, discretion will turn into a form of unreviewable judicial power.

In the theory of Judicial Discretion, discretion should not be exercised to strengthen the individual power of judges, but to provide limited flexibility in adjusting the law to the uniqueness of the case (KLATT, 2007). For this reason, discretion needs to be accompanied by systematic sentencing guidelines, so that each consideration can be calibrated and tested for compliance with the principles of justice (Mallett, 2015).

An interview with one senior judge corroborates this statement, that the absence of sentencing guidelines in Indonesia often forces judges to "grope" in imposing punishment, which ultimately leads to disparities, not because of unfair intentions, but because of the lack of legal instruments that support consistency.

The Direction of Sentencing Reform: Building a Bridge between Certainty and Justice

Seeing the findings of disparity and weak discretionary limits, the need for criminal reform is inevitable. This reform is not only technical, but must touch the regulatory, institutional, and paradigm aspects of criminal law as a whole. At the regulative level, the Supreme Court needs to immediately develop binding sentencing guidelines, not just normative recommendations. These guidelines should be developed based on empirical parameters and solid theories of justice, such as the level of drug-related harm, the role of the perpetrator, and recidivism trends.

In addition, there is a need to implement data-driven sentencing technology, such as a digital sentence analysis system that can assess whether a sentence deviates from the general pattern that has been established. Some countries such as Finland and Norway have developed predictive sentencing models to help judges impose consistent and fair sentences.

On the other hand, the Indonesian legal system needs to be more progressive in treating drug users as victims of addiction, not merely criminals. Based on Article 54 of the Narcotics Law, rehabilitation should be the main approach for drug users, not imprisonment, which leads to prison overcrowding and fails to reduce abuse (Ali Syaifudin et al., 2023; Ariyanti, 2017).

Sentencing reform also requires a paradigm shift in viewing justice not simply as compliance with legal texts, but as the ability to balance between legal certainty and human values. Aristotle's theory of distributive justice provides a foundation that justice can only be achieved if the treatment of legal actors is based on proportionality and balance, not the false uniformity produced by unguided discretion (Sigler, 2003).

Discussion

This research provides a significant scientific novelty in the discourse on criminalization of narcotics crimes in Indonesia, especially through an approach that is not only normative, but also based on empirical analysis of court decisions. So far, many criminal

law studies have discussed punishment disparities descriptively or theoretically, without directly exploring how these disparities arise in the context of concrete decisions and how they relate to the principle of legal certainty and the practice of judge discretion.

The main novelty of this research is in the formulation of an integrated analytical framework between legal certainty, judicial discretion, and the need for sentencing reform. This research not only highlights disparity as a legal anomaly, but also develops a systemic mapping of its causes, and offers a solution approach through regulatory, institutional and data-driven reforms. Thus, this research fills a gap in the Indonesian legal literature that has tended to separate the issue of disparity and the issue of legal certainty into two independent studies.

On the other hand, this research also develops the application of juridical-empirical analysis of court decisions, which has not been widely used in the context of drug sentencing in Indonesia. Through this method, the research managed to concretely prove that disparity is not an assumption, but a juridical fact that can be measured, analyzed, and criticized with a scientific approach that can be accounted for. This is an important foundation for the establishment of a more open, objective, and accountable criminal evaluation system.

Theoretically, the contribution of this research expands the scope of application of Hans Kelsen's theory of legal certainty, Aristotle's theory of distributive justice, as well as contemporary judicial discretion theory, by contextually linking them to Indonesian criminal law practice (Soge, 2022). By bringing these three theories together in one analytical framework, this research offers a more complete understanding of the challenges and direction of the transformation of the drug sentencing system in developing countries such as Indonesia.

Practically, this research provides evidence-based policy recommendations, which can be a reference for the Supreme Court, legislature, and criminal policy makers in formulating binding and equitable sentencing guidelines. In addition, the findings of this research can be used by the Judicial Commission, non-governmental organizations, and legal academics to encourage judicial accountability and ensure that the principle of equality before the law is truly realized in sentencing practices in Indonesia. Overall, this research not only provides an academic contribution, but also strengthens the foundations of national criminal law reform towards a more modern, fair, and human values-based punishment system.

Conclusion

This research shows that the practice of criminalization in narcotics crimes in Indonesia still faces serious challenges in realizing the principle of legal certainty. The disparity of punishment found in various court decisions, even though the cases have similar legal characteristics, proves the inconsistency in the application of criminal law. This reflects the weakness of a standardized punishment system, as well as the non-optimal implementation of sentencing guidelines as a juridical instrument to ensure equality of legal treatment.

Furthermore, the discretion given to judges as part of judicial independence is often used without measurable objective guidelines. When discretion is exercised without a strong accountability framework, the room for subjectivity expands, and the potential for injustice increases. In the context of drug cases, where the role of the perpetrator and the amount of evidence can be clearly classified, irregularities in the administration of punishment actually obscure the main objectives of punishment: namely to uphold justice, protect society, and rehabilitate offenders. Using the theoretical frameworks of legal certainty (Hans Kelsen), distributive justice (Aristotle), and judicial discretion, this research successfully reveals that

inequality in sentencing is not only a technical problem of decisions, but a systemic problem that needs to be addressed through comprehensive legal reform.

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