



Criminal disparity in the policy of application the criminal acts of narcotics in Indonesia

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Abstract

This study aims to determine the factors that cause differences in the application of the law in dealing with narcotics crimes related to criminal acts of abuse (Article 127) and abuse (Article 112), causing disparities. This research is a non-doctrinal legal research. The results of the study show that the disparity in sentencing in narcotics cases occurs because of differences in the application of the law between Judges of the First Level Court, Judges of the Appellate Level, and Judges of the Cassation Level, where the Judges of the First Level Court and Judges of the Court of Appeals Level for narcotics cases of methamphetamine type with the amount of evidence in under one gram, but if at the time of being caught red-handed they are not using narcotics, they tend to apply Article 112 (criminal act of narcotics abuse) with a minimum penalty of four years, while the Judge of the Court of Cassation in the same case tends to apply Article 127 (criminal act of drug abuser). with a maximum penalty of four years. From the two articles it is clear that there is a disparity in the criminal threats where in Article 112 the minimum penalty is four years while in Article 127 the maximum penalty is four years, so that the difference in the application of the two articles will definitely greatly affect the punishment for the two articles.

Keywords: disparity, judge's decision, narcotics crime

Introduction

Article 28 A of the 1945 Constitution states "Everyone has the right to live and has the right to defend his life and life" then in Article 28 H Paragraph (1) states that, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good environment. live a good and healthy life and have the right to health services". Based on this, health is a human right and is one of the essences in the social welfare of the community that must be realized by the state with the active participation of the community. Efforts to realize public health can be carried out by the state through social policies which must also be supported by effective legal policies so that they are right on target. Therefore, as stated in the General Elucidation of Law Number 36 of 2009 concerning Health, every state policy to improve the public health status as high as possible must be implemented based on the principles of non-discrimination, participatory, protective and sustainable which is very important for the formation of human resources. Indonesia, improving the health and competitiveness of the nation, as well as national development.

At a time when the state was making efforts to improve the health status of the community, it was really concerning because it was injured by the actions of some people who did not understand the importance of health, namely narcotics abuse. Narcotics abuse has reduced the public's health status to a point of concern. This condition is exacerbated by the existence of narcotics crimes in the community showing an increasing trend both quantitatively and qualitatively with widespread victims, especially among teenagers and the younger generation in general, this is the background for the establishment of Law Number 35 Year 2009 concerning Narcotics as stated in the General Explanation. Although Law Number 35 of 2009 concerning

Narcotics contains very high criminal threats and minimal criminal threats, it turns out that this is not effective enough to be able to eradicate narcotics crimes.

Narcotics crime is an extraordinary crime, in terms of its destructive power against narcotics abusers and for the survival of the younger generation. For this reason, the eradication of narcotics crimes also needs to be carried out with extraordinary efforts both in handling the victims and perpetrators of narcotics crimes themselves. Efforts to eradicate narcotics crimes can be carried out by means of prevention and prosecution of perpetrators. In carrying out these efforts, the government has established a special agency tasked with preventing and taking action or law enforcement against narcotics criminals, namely the National Narcotics Agency, in addition to the Indonesian National Police which has the same duties and authorities. The policy of eradicating narcotics crimes at a certain level is a dilemma, on the one hand the state must continue to ensure the availability of narcotics but on the other hand the state must make efforts to eradicate narcotics abuse. These problems have been anticipated as in the consideration of the drafting of Law Number 35 of 2009 concerning Narcotics which states that efforts to improve health services by seeking the availability of certain types of narcotics needed as drugs as well as preventing and eradicating the dangers of abuse and illicit trafficking of narcotics and narcotic precursors.

Therefore, the implementation and implementation of narcotics laws and regulations both in the context of prevention and in the context of prosecution must be carried out effectively and efficiently. Law Number 35 of 2009 concerning Narcotics has provided basic guidelines for its application as specified in Article 3, held on the basis of justice, protection, humanity, order, protection, security,

scientific values and legal certainty. The legal process is very important to get attention from the investigation, investigation and prosecution, especially the prosecution of perpetrators must also be carried out appropriately, effectively and efficiently, especially at the prosecution stage. The prosecution stage since in the process of preparing the indictment, the construction of the application of the article must be carried out correctly and correctly in accordance with the actual legal events. This is important so that the Public Prosecutor can prosecute the defendant in accordance with the legal events that occurred. The judge is also in order to be able to decide the sentence to the defendant in accordance with justice both for the defendant and for public justice considering the impact of the narcotics crime itself.

In practice, narcotics criminals are often punished based on unfair court decisions and there is no legal certainty between one perpetrator and another. The same criminal event is prosecuted or decided under a different article or otherwise a different legal event is prosecuted or decided under the same article. This occurs as a result of differences in the application of the article to perpetrators of criminal acts of narcotics abuse. The difference in the application of the article also shows the quality of the legislation that is not good or at least cannot provide legal certainty which is the orientation of the legal objectives as expressed by Gustav Radbruch (Krisnajadi, 1989). Legal certainty does not materialize by itself but must still be applied by law enforcement, for that we need a legal certainty in its application in this case positive law. But the vague meaning of the law can weaken the positive law (Sobandi Handy, 2011). The consequence of the principle of *nullum crimen nulla poena sine lege scripta* (no crime without a law governing it) is an act that is prohibited must be written clearly in the law (Eddy OS Hiariej, 2009) ^[1]. This principle is often referred to as the principle of legality

which functions to protect the people from the exercise of unlimited power from the government by using criminal law as a means. JE. Sahetapy, 2004). Soerjono Soekanto stated that between legal certainty and justice are two factors that support each other in an effort to maintain harmony between the interests contained in society (Rato Dominikus, 2014) ^[5]. The existence of differences in the application of the law by law enforcers indicates that there is ambiguity (fuzzy) of positive law in the form of Law Number 35 of 2009 concerning Narcotics which causes the law to become weak and creates uncertainty so that it can lead to injustice.

This ambiguity occurs especially in the formulation of narcotics crime offenses in Article 112 Paragraph (1) and Article 127 Paragraph (1) letter a of Law no. 35 of 2009 concerning Narcotics, namely:

Article 112 Paragraph (1), reads:

Any person who without rights or against the law owns, keeps, controls or provides Narcotics Category I is not a plant, shall be sentenced to a minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine of Rp.800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).

Article 127 paragraph 1 letter a, reads:

Every abuser of Narcotics Category I for himself shall be sentenced to a maximum imprisonment of 4 (four) years.

The ambiguity of the formulation of the narcotic crime offense above makes it difficult for law enforcement, both investigators, public prosecutors and judges to apply the law to deal with narcotics crime cases, especially those related to the three articles mentioned above. This results in frequent corrections of demands and decisions by judges at every stage of the judicial process starting from the first level, the level of appeal, and the level of cassation. This can be seen from several narcotics cases in the jurisdiction of Karanyanyar Regency as in the data, namely:

Table 1: Data on Differences in the Application of Narcotics Case Articles

No	Convict's name	Prosecutor's Articles	Articles of Judges' Decisions		
			District Court	High Court	Supreme Court
1.	Muhamad Zazid Jamil alias Gembes Bin Marikun	Article 112 Paragraph (1) 5 years	Article 112 Paragraph (1) 4 years	Article 112 Paragraph (1) 4 years	Article 127 Paragraph (1) letter a 1 year 6 months
2.	Rukiyo Bin Marto Sadiyo	Article 127 Paragraph (1) letter a 1 year 6 months	Article 112 Paragraph (1) 4 years	-	-
3.	Ogi Restu Putro Bin Slamet Riyadi Paeran	Article 112 Paragraph (1) 5 years	Article 112 Paragraph (1) 4 years	Article 112 Paragraph (1) 4 years	Article 112 Paragraph (1) 1 year 6 months
4.	Dian Kurniawan Bin Warsidi	Article 112 Paragraph (1) 5 years	Article 112 Paragraph (1) 4 years	Article 112 Paragraph (1) 4 years	Article 112 Paragraph (1) 4 years
5.	Endri Yuli Susilo Bin Kirno	Article 112 Paragraph (1) jo. Article 132 Paragraph (1) 4 years 6 months	Article 112 Paragraph (1) jo. Article 132 Paragraph (1) 4 years 6 months	Article 112 Paragraph (1) jo. Article 132 Paragraph (1) 4 years 6 months	Article 127 Paragraph (1) letter a 1 year 6 months
6.	Billi Ilham Nugroho Bin Trie Suwanto Suwandono	Article 112 Paragraph (1) 4 years 6 months	Article 112 Paragraph (1) 4 years	Article 112 Paragraph (1) 4 years	Article 127 Paragraph (1) letter a 1 year 6 months

The implication of the frequent correction of demands and decisions by judges at each stage of the judicial process results in legal decisions being felt to be unfair and not getting legal certainty. The indicator is the number of defendants and public prosecutors who make appeals and cassation efforts, even though in the judicial process, legal remedies are actually legal matters. Data on legal remedies in narcotics crime cases as submitted by the Deputy Attorney General for General Crimes handled the most

cases regarding narcotics throughout 2019 as many as 22,990 cases (<https://national.kompas.com>). In connection with this, the most cases filed for cassation in the scope of special crimes turned out to be narcotics and psychotropic cases as many as 2,715 cases (60.13%) (<http://pa-trenggalek.go.id>).

The ambiguity of the formulation of the narcotic crime offense above also has implications for the treatment or punishment that must be imposed on the perpetrators of

narcotics crimes, whether rehabilitation or imprisonment should be imposed. This occurs as a result of the difficulty of law enforcement officers in applying the law so that its application is very normative legalistic, as a result they are unable to reach what legal events are actually committed by narcotics criminals who are being tried. Inaccuracy in imposing punishment on perpetrators will result in inappropriate treatment in efforts to eradicate illicit narcotics trafficking. This error will result in a new criminogen factor in efforts to eradicate narcotics crime. Perpetrators who should have been rehabilitated but were imprisoned, or conversely perpetrators who should have been imprisoned but were instead rehabilitated. The large number of narcotics criminals who were sentenced to imprisonment for a long time resulted in overcapacity correctional institutions. The correctional process in the end could not run as it should, the purpose of the deterrent effect was not achieved, on the contrary, it became a cadre process between fellow narcotics prisoners. This confirms Donald Clemmer's theory, as prisonization, that is, someone who enters prison will be faced with various problems that live and develop in prison, so that previously not evil inmates become (more) evil (Ratna WP, 2017). Law enforcement is supposed to provide legal solutions, but instead it creates new problems.

Minister of Law and Human Rights (Menkumham) Yasonna Hamonangan Laoly said that almost 50 percent of the residents of prisons and detention centers are drug convicts. Still citing data from the 2018 Ministry of Law and Human Rights, it is known that a number of special prisoners consisted of 5,110 corruption convicts, then 74,037 drug dealers, 41,252 drug convicts, 441 terrorist convicts, 165 money launderers, and 890 illegal logging perpetrators. (https://national.okezone.com). The logical consequence of the problem of ambiguity in the formulation of the narcotic crime offense above resulted in first, there was a disparity in the punishment of narcotics criminals. Second, the criminal justice process does not meet the principles of fast, cheap and simple because many defendants and the Public Prosecutor are taking legal action. Third, providing

opportunities for law enforcement officers to cheat in order to take advantage of the case handling process. The problems mentioned above are interesting to conduct research and study in terms of the application of the law so that the perpetrators of narcotics crimes get justice and legal certainty and for the sake of achieving a fast, light and simple trial. Therefore, the author considers it important to conduct legal research on the problems mentioned above to avoid or at least minimize differences in the application of the law, especially in the courts of the first instance to the level of cassation because the differences in the application of the law lead to disparities in punishment caused by the application of the law not by the law. judge's subjectivity. The problem that will be described in the writing of this paper is "Why there are differences in the application of the law in dealing with narcotics crimes related to criminal acts of abuse (Article 127) and abuse (Article 112), causing disparity?"

Research Methods

The type of research in this study is non-doctrinal legal research or sociological juridical research, namely research that is carried out directly by looking at the reality in practice in the field, and is based on a study of the workings of law in society. The operation of law in society can be assessed from the level of legal effectiveness (Salim HS *et al*, 2007). This study will look at and analyze how the application of narcotics crime law in Law Number 35 of 2009 concerning Narcotics which in practice often causes disparity in punishment caused by the application of different laws. The nature of this research is descriptive analysis, which is a study that describes or provides an overview of the object under study through data or samples that have been collected as they are, conducts analysis and draws conclusions that apply to the public.

Discussion

Application of Narcotics Abuse Criminal Acts That Cause Disparity in Sentencing

Table 2: Based on the results of the author's research on the handling of narcotics crime cases in the Karanganyar Regency Law Area in 2019, the following data were obtained:

No	Convict's Name	Article of Indictment	Article claim	Verdict (Article, Imprisonment)			Berat Barang Bukti (gr)
				District Court	High Court	Supreme Court	
1.	Witono Als. Nono bin Wigyo Sukirno	Article 114, 112, 127	Article 112 8 years	Article 112 6 years	--	--	0,473
2.	Ferry Setyo Nugroho Als. Ferry bin Sutomo	Article 114, 112	Article 114 7 years	Article 112 6 years 6 month	--	--	4,86
3.	Eka Sri Purwanto Als. Pentong bin Pujiharto	Article 112, 127	Article 112 6 years	Article 112 4 years	--	--	0,335
4.	Winarto Als. Narto bin Sujak	Article 114, 112	Article 112 7 years	Article 112 6 years	--	--	0,36300 0,34740 0,36545 1,50026 1,69065
5.	Amban Prastowo Als. Aamban bin Mumahad Saleh	Article 114, 112, 127	Article 112 7 years	Article 112 6 years 6 month	Article 112 5 years	Article 127 1 years 6 month	0,49
6.	Hendrix Sumarna Als. Hendrix bin Susilo Wiyono	Article 114, 112	Article 112 15 years	Article 112 12 years	Article 112 10 years	Article 112 8 years	14,59952
7.	I. Supriyanto Als. Dika bin Gimana II. Agus Wiyono Als. Kentos bin Sukiyo	Article 114, 112	Article 112 6 years	Article 112 5 years	--	--	0,24654
8.	Iiskandar Agung bin Didit Sutarno	Article 114, 112, 127	Article 112 5 years	Article 112 4 years	--	--	Un identifieiction
9.	Sugiyono Als. Agus bin Toha Sutejo	Article 112, 127	Article 112 6 years	Article 127 2 years 6 month	Article 127 2 years 6 month	--	0,00276

10.	Decky Tosani Als. Decy bin Sri Utomo	Article 114, 112, 127	Article 112 6 years	Article 112 5 years	Article 112 5 years	Article 127 1 years 6 month	0,09315 0,03725
11.	Rizqi Sugiyarto Als. Black bin Suparlan	Article 114, 112, 127	Article 112 7 years	Article 112 6 years	Article 112 6 years	Article 127 1 years	Un identifieiction
12.	Dwi Purwanto Als. Tebe bin Joko Waluyo	Article 114, 112, 127	Article 112 7 years	Article 112 5 years	--	--	2,35738
13.	Suprianto bin Kiswandi	Article 114, 112, 127	Article 114 7 years	Article 114 5	Article 114 5 years	Article 127 1 years 6 months	0,07411
14.	Betty Putra Sari Als. Betty bin Taryo	Article 112, 127	Article 112 5 years 6 months	Article 127 3 years	Article 127 3 years	--	Tidak teridentifikasi
15.	Didik Hartanto Als. Kodok bin Suratno	Article 114, 112	Article 114 9 years	Article 114 6 years 6 months	Article 114 6 years 6 months	--	7,92814
16.	Heri Gunarto Als. Gepeng bin Suyanto	Article 112, 127	Article 112 4 years 6 months	Article 112 4 years	Article 112 4 years	Article 112 4 years	0,34758
17.	Siswanto Als. Wanto Als. Togog bin Lasiyo	Article 114, 112, 127	Article 127 2 years 6 months	Article 127 2 years 6 months	--	--	0,02446
18.	Fandi Bagus Putra Firdaus Als. Fandi bin Firdau	Article 114, 112, 127	Article 112 5 years	Article 112 5 years	Article 112 5 years	Article 127 1 years 6 months	0,27
19.	Aris Setiawan Als. Ateng bin Mitro Sutarnan	Article 114, 112, 127	Article 112 3 years 6 months	Article 127 2 years 6 months	--	--	0, 09472
20.	Bimo Santoso Als. Bimo bin Tiyono S	Article 114, 112	Article 114 6 years 6 months	Article 114 5 years	Article 114 6 years	Article 114 5 years	0,07431 0,01216
21.	Andi Kristanto Als. Sempok bin Sutrisno	Article 114, 112, 127	Article 112 5 years	Article 127 3 years	Article 127 3 years	Article 127 1 years 6 months	0,28
22.	I.Warto Als Entok bin Suparno II. Warno Als. Jesus	Article 114, 112, 127	Article 127 I. 3 years II. 2 years 6 months	Article 127 I. 3 years II.2 years 6 months	--	--	0,58541
23.	Harjanto Als. Hari bin Robiyanto	Article 114, 112, 127	Article 112 4 years 6 months	Article 127 1 years 6 months	Article 127 1 years 6 months	Article 127 1 years 6 months	0,17256
24.	I. Endri Yuli Susilo Als. Glempo bin Kirno II. Sri Afandi Als. Andi Als. Dobleh bin Suwarso	Article 114, 112, 127	Article 112 I. 4 years 6 months II. 5 years 6 months	Article 112 I. 4 years II. 4 years 6 months	Article 112 4 years II. 4 years 6 months	Article 127 1 years 6 months	0.07
25.	Gunawan Als. Mbolo bin Wahyu Witon	Article 114, 112, 127	Article 112 5 years	Article 112 5 years	Article 112 5 years	Article 114 5 years	0,1258 0,79838
26.	Ogi Restu Putro Als. Ogi bin Slamet Riyadi Paeran	Article 114, 112	Article 112 5 years	Article 112 4 years	Article 112 4 years	Article 112 1 years 6 months	0.10680
27.	Budi Purnomo Als. Sipur bin Wignyo Darsono	Article 114, 112, 127	Article 112 6 years	Article 112 4 years	--	--	0,65 0,59 0,36
28.	Marhono Als. Kekek bin Ponco Tinoyo	Article 114, 112	Article 112 8 years	Article 112 5 years 6 months	--	--	3,48392
29.	Beny Setiawan Als. Bendut bin Siman	Article 114, 112	Article 112 4 years	Article 112 4 years	Article 112 4 years	Article 127 1 years 6 months	0,07459
30.	Dian Kurniawan Als. Marsel Als. Peleng bin Warsid	Article 114, Article 112	Article 112 5 years	Article 112 4 years	Article 112 4 years	Article 112 4 years	
31.	Joko Suryadi Als. Joko Jangkrik bin Hadi Sumarto	Article 114, 112, 127	Article 127 1 years 3 months	Article 127 10 months	--	--	0,32
32.	Aditya Rohadi Utomo Als. Codot bin Sugiyarto, dkk	Article 114, 112, 127	Article 127 Masing-masing 1 years 3 months	Article 127 Masing-masing terdakwa 10 months	--	--	
33.	Darwanto Als. Timlong bin Atmo Rejo	Article 114, 112, 127	Article 112 5 years	Article 112 4 years	Article 112 4 years	Article 127 1 years 6 months	0,34
34.	Echsan Galang Setiawan Als. Galang bin Mukiran Hadi Prayitno	Article 114, 112, 127	Article 112 5 years	Article 112 4 years	Article 112 4 years	Article 127 1 years 6 months	0,21
35.	Denny Noer Rahman Als. Denny bin Suryono	Article 114, 112, 127	Article 112 5 years	Article 112 4 years	Article 112 4 years	Article 127 1 years 6 months	0,21
36.	Jefri Rio Utomo Als. Jefri bin Sukasdi	Article 114, 112, 127	Article 127 1 years	Article 127 10 months	--	--	0,05806
37.	Taufikurohman Als. Taufik bin Syarifudin	Article 114, 112	Article 114 6 years	Article 114 5 years	Article 114 5 years	Article 114 5 years	
38.	Wahyu Ridha Pratama bin Mulyon	Article 112, 127	Article 112 6 years	Article 127 2 years	Article 127 2 years	Article 127 2 years	0,79976
39.	Hanifah Tri Kusumadewi Als. Dewi binti Dahlan Syahroni	Article 114, 112, 127	Article 127 1 years	Article 127 10 months	--	--	
40.	Enny Ruhmawati Als. Inces binti Daliman	Article 114, 112, 127	Article 127 1 years	Article 127 10 months	--	--	

During 2019 in the Karanganyar Regency, there were 195 cases. Cases in the category of crimes against security and public order, namely beatings or violence in public, gambling, child protection are 36 cases. There are 98 cases in the category of crimes against people and property, namely persecution, theft, fraud, embezzlement. Thus the number of cases other than narcotics is 134 cases. There are 61 cases of narcotics abuse, both those that are consumed for themselves or those that are illegally owned or traded. The percentage of narcotics cases alone is 31%, a fairly large number compared to other cases. The number of narcotics cases is directly proportional to national data in 2018, almost 50 percent of residents of prisons and detention centers are drug convicts. Still citing data from the 2018 Ministry of Law and Human Rights, it is known that a number of special prisoners consisted of 5,110 corruption convicts, then 74,037 drug dealers, 41,252 drug convicts, 441 terrorist convicts, 165 money launderers, and 890 illegal logging perpetrators. This data shows the number of handling narcotics cases there is a positive correlation between cases nationally and cases in the regions and this means that it can be interpreted that the distribution of narcotics cases is almost evenly distributed in various regions.

In addition, the number of 40 cases has evidence, which will be very influential in the application of the Article, this will be analyzed by the author in the discussion of the results of further research. The data for the 40 cases contained 6 cases where the evidence was not identified, meaning that the evidence in the form of narcotics in this case could not be weighed because the volume was too small, usually the narcotics were only remnants attached to the evidence of bongs or narcotics suction devices so that the volume cannot be identified, which means the volume is below 1 gram.

Data for 40 cases of narcotics evidence of narcotics evidence that exceeds 1 gram are 6 cases, the remaining 34 cases of narcotic evidence are less than 1 gram, including cases where the evidence is not identified means the weight of the evidence is less than 1 gram. This benchmark or limit on the weight of 1 gram of evidence will be used in writing as a limit to analyze the application of the Article at the discussion stage. This limitation of 1 gram is based on the Circular Letter of the Supreme Court Number 04 Years 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions, as a guide for judges in the application of punishment as referred to in Article 103 letters a and b of the Law. Law Number 35 Years 2009 concerning Narcotics can only be imposed on the classification of criminal acts when caught red-handed, evidence of 1 (one) day use is found.

The number of narcotics cases that went through legal action was 23 cases out of 40 narcotics cases in 2019 (57.5%). A total of 23 cases went through legal remedies, 3 cases only reached the appeal level, while the remaining 20 cases went through appeals and cassation. The number of cases other than narcotics in 2019 was 134 cases which went through legal action as many as 16 cases (11.9%). A total of 16 cases went through legal remedies, 12 cases only reached the appeal level, while the remaining 4 cases went through appeals and cassation. So that of the total criminal cases in the Karanganyar jurisdiction, the cases that filed

legal remedies were 11.8% narcotics cases and 8.2% non-narcotics cases). Thus, more than half of narcotics cases (57.5%) in 2019 in Karanganyar Regency went through a legal process, both at the level of appeal and cassation. This legal action data is directly proportional to narcotics cases on a national scale. In connection with this, the most cases filed for cassation on a national scale within the scope of special crimes are also narcotics and psychotropic cases as many as 2,715 cases (60.13%). This data shows the number of legal remedies for narcotics cases that there is a positive correlation between cases nationally and cases in the regions and this means that it can be interpreted that the distribution of legal remedies for narcotics cases is almost evenly distributed in various regions.

Data on 40 cases of narcotics abuse cases, the application of the Articles varies according to the criminal events that occurred and is sometimes influenced by the volume of evidence. In the following, the author describes the application of Article which is proven in the trial process until the case has permanent legal force. Of the 40 cases of narcotics abuse Article 114 that were proven in the trial as many as 4 cases. Article 112 which was proven in the trial were 12 cases. The application of Articles 114 and 112 in this study is qualified as narcotics abuse. Article 127 which was proven in the trial were 24 cases. The application of Article 127 in this study is qualified as a narcotics abuser. The author will further describe the application of the Article with the length of the sentence without considering the volume of evidence. Article 114 with a minimum criminal penalty of 5 years which was proven in the trial in 4 cases with a prison sentence ranging from 5 years to 6 years 6 months. Article 112 with a minimum criminal penalty of 4 years which was proven in the trial as many as 12 cases with prison sentences ranging from 4 years to 8 years. Article 127 with a maximum criminal threat of 4 years which was proven in the trial as many as 24 cases with prison sentences ranging from 10 months to 3 years.

The author will further describe the application of the Article with the length of the sentence by considering the volume or weight of the evidence. The benchmark of the weight of the evidence that the author uses is less or equal to 1 gram. Data on 40 cases of narcotics abuse cases whose evidence is less or equal to 1 gram are 32 cases. Article 114 with a minimum criminal penalty of 5 years which was proven in the trial in 2 cases with a prison sentence of both 5 years. Article 112 with a minimum criminal penalty of 4 years which was proven in the trial as many as 6 cases with prison sentences ranging from 4 years to 6 years. Article 127 with a maximum criminal threat of 4 years which was proven in the trial as many as 24 cases with prison sentences ranging from 10 months to 3 years.

The application of Article 114 with a criminal threat of at least 5 years which was proven in the trial in 2 cases with a weight of evidence of less than 1 gram, both of them have gone through the legal process of appeal to cassation. The application of Article 112 with a minimum criminal threat of 4 years which was proven in the trial as many as 6 cases with a weight of evidence less than 1 gram of which 4 cases did not go through legal remedies and as many as 2 cases went through an appeal to cassation process. The application of Article 127 with a maximum criminal threat of 4 years which was proven in the trial as many as 24 cases with evidence weighing less than 1 gram were 8 cases without legal remedies, 2 cases through appeals and 14 cases

through appeals to cassation. The application of Article 114 with a criminal threat of at least 5 years which was proven in the trial in 2 cases with a weight of evidence of less than 1 gram each with a sentence of 5 years. The application of Article 112 with a criminal threat of at least 4 years which was proven in the trial with evidence weighing less than 1 gram was 4 cases that did not go through legal remedies with sentences of 2 cases for 4 years, 1 case for 5 years and 1 case for 6 years. The application of Article 112 as many as 2 cases that went through the process of legal appeal to cassation each with a sentence of 4 years.

The application of Article 127 with a maximum criminal threat of 4 years which was proven in the trial as many as 24 cases with a weight of evidence of less than 1 gram were 8 cases without legal action with a penalty of 3 cases for 2 years 6 months and 5 cases for 10 months. A total of 2 cases

went through an appeal with a sentence of 1 case for 2 years 6 months and 1 case for 3 years. A total of 14 cases went through an appeal to cassation with a sentence of 1 year and 6 months each. The application of Article 114 as many as 2 cases that went through the legal process of appeal to cassation in 1 case the application of Article did not change from the demands of the General Prosecutor to the Supreme Court remained Article 114 while as many as 1 case from the demands of the General Prosecutor to the High Court Article 112, the Supreme Court changed Article 114 The application of Article 112 in 2 cases that went through the legal process of appeal to cassation from the demands of the Public Prosecutor to the Supreme Court remained unchanged from Article 112. The application of Article 127 in 14 cases through appeals to cassation, there are four patterns of changes in the application of Article, namely:

Table 3

No.	Indictment	Demands	Court			Jumlah
			District Court	High Court	Supreme Court	
1.	Article 114, 112, 127	112	112	112	127	8
2.	Article 114, 112, 127	114	114	114	127	1
3.	Article 114, 112, 127	112	127	127	127	3
4.	Article 114, 112,	112	112	112	112 (127)	2

Nomor 4 sebanyak 2 perkara berbeda dengan lainnya Article 112 (127) maksudnya adalah Mahkamah Agung dalam pertimbangannya tetap membuktikan Article 112

namun dalam menjatuhkan hukuman mengacu pada Article 127 selama 1 years 6 months dibawah ancaman minimal Article 112.

Table 4: Penerapan Article 114,112 dan 127 dengan berat barang bukti narkoba kurang dari 1 gram, yang telah mempunyai kekuatan hukum tetap dengan hukuman sebagai berikut:

No.	Application of Article	Length of Criminal	Number of Cases	Information
1.	Article 114	5 years	2	Legal remedies for appeals (@5 years)
2.	Article 112	4 – 6 years	6	4 no legal action (2 cases 4 years, 1 case 5 years, 1 case 6 years) 2 appeals – cassation (4 years)
3.	Article 127	10 months – 3 years	24	8 no legal remedies (3 cases 2 years 6 months and 5 cases 10 months) 2 appeals (1 case 2 years 6 months and 1 case 3 years) 14 appeals - cassation (1 year 6 months)

The description of the handling of narcotics crime cases above with evidence of less than 1 gram of 32 cases in terms of quality and quantity of cases is at least close to appeal (balanced). The description of the data has explained and shown as follows: First, the application of Articles of abuse and abuse of narcotics in the trial process, starting from the preparation of indictments, evidence in the indictment to decisions at the District Court to the Supreme Court underwent changes with various variations. This has shown that there are differences in the application of narcotics criminal law regulations in taking action against narcotics abusers and abusers. This problem is what the author wants to examine to find the cause, which the author will describe further in the discussion of the case approach to find out the cause in more depth.

Second, the application of the Article on narcotics abuse and abuse in the trial process has resulted in criminal disparities with various variations. The criminal disparity in handling cases is actually a necessity because there are many variables that influence the decision making, both subjective and objective variables. However, in this study the problem of criminal disparity is caused by the application of different Articles in similar cases. This problem will be described

further in the discussion to formulate the application of narcotics criminal law regulations in taking action against narcotics abusers and abusers to prevent criminal disparities with good and correct legal interpretations.

Third, the legal problems that the author describes in the background of the problem contain real legal problems and actually occur in the process of handling narcotics crime cases which actually start from the process of investigation, prosecution to decision making. These legal problems have resulted in new problems, including injustice for perpetrators of narcotics crimes, trial processes that do not meet the principles of fast, cheap and simple, and prisons and correctional institutions facing the problem of over capacity. Legal problems and their various consequences must immediately find a solution to achieve effective and efficient narcotics law prevention and enforcement.

Causes of Disparity in Sentencing.

Harkristuti Harkrisnowo (RI Judicial Commission, 2014), states that criminal disparities can occur in several categories, namely:

1. Disparities between the same crime;
2. Disparities between crimes that have the same level of seriousness;

3. Criminal disparity imposed by one panel of judges;
4. The disparity between the sentences imposed by different judges for the same crime.

This study is more inclined to the category of disparity between the sentences handed down by different judges for the same crime, namely the crimes imposed by the Panel of Judges at the First Level Court, Appeal Level, and Cassation Level. Sentencing disparities in criminal cases in general can occur due to the subjective factor of judges in imposing crimes. However, unlike narcotics crime cases, apart from the subjectivity of judges, criminal disparities are very likely to occur due to differences in the application of the law, in this paper, namely the application of Article 114 Paragraph (1), Article 112 Paragraph (1), Article 127 Paragraph (1) letter a Law no. 35 Years 2009 on Narcotics.

Lawrence M. Friedman suggests law as a system in which it contains components. The legal system in Friedman's view consists of three components, namely the legal structure, legal substance, and an interacting legal culture. Both legal substance, legal structure, and legal culture are related to each other. So the operation of the law is not only a mere function of legislation but the activities of the implementing bureaucracy. (Legal angle.com). The legal system for narcotics crimes in Indonesia is based on the opinion of Lawrence M. Friedman, namely:

Legal Substance

The laws and regulations governing narcotics crimes are contained in Law Number 35 Years 2009 concerning Narcotics. Broadly speaking, the types of criminal acts contained in Law Number 35 years 2009 concerning Narcotics are starting from Article 111 paragraph (1) to Article 148. According to Diah Imaningrum Susanti, there are three important problems in the law, namely intent, ambiguity and the complexity of Diah Imaningrum Susanti, Legal Interpretation of Theory and Methods, Sinar Graphic, Jakarta, 2019, p. 22.) For this reason, the author will base on these three important issues to assess the criminal provisions of Law Number 35 Years 2009 concerning Narcotics between Article 112 paragraph and Article 127 paragraph 1 letter a.

Meaning (Intentions)

Determining the meaning of an Article text in criminal provisions is not an easy task considering that there is a time span and distance between the legislator (Dewan Perwakilan Rakyat) as the messenger and the law enforcer (law enforcement) as the recipient of the message. Moreover, the members of the DPR who are members of a political party have their own ideologies which at the time of making laws have aims and objectives in accordance with the lines of their political ideology. The next difficulty is that law enforcement officers in the trial process have different interests between the Public Prosecutor and Legal Counsel or the defendant and the judge. The Public Prosecutor will of course interpret the text of the law in accordance with the interests of proving the case and vice versa the Legal Counsel according to his interests in the context of defending the defendant. On the other hand, the judge will interpret the meaning of the law according to his belief.

Article 112 Paragraph (1) Law Number 35 Years 2009 concerning Narcotics with the element "Every person who without rights or against the law owns, keeps, controls or

provides Narcotics Category I is not a plant." The phrase "owning, storing, controlling or providing" as the main element to be addressed in the Article has a very broad scope of events or actions. As a result, there are many events or actions that can easily be captured by the intent of these provisions. For the Public Prosecutor for the sake of proof, it is certainly very "profitable" because the actions of the perpetrator are easy to prove, on the contrary it will be very "harmful" for the Legal Counsel or the defendant because it will be difficult to carry out a defense. The real problem is not in the loss or profit of the parties but it will be very difficult for law enforcement officials to be able to balance between certainty, benefit and justice. Article 127 paragraph (1) letter a of Law Number 35 Years 2009 concerning Narcotics with the element "Every abuser of Narcotics Group I is for himself". The act of "abusers" has the intention of using or consuming narcotics which is carried out without rights or against the law in this case without a doctor's recommendation.

Blur (Vagueness)

According to HLA. Hart (Bambang Sutiyo, Legal Discovery Methods (Efforts to Realize a Certain and Just Law), Third Printing, UII Press, Yogyakarta 2009) problems of ambiguity in statutory provisions include: First, in the wider community, law works through general rules and not through individual directions, so it tends to be abstract, using general concepts, so that it may become blurred. Second, because the rule of law uses language to resolve social conflicts, much depends on the words used by these rules. The statutory provisions actually have two layers, namely written legal texts and legal norms that are not explicitly written but whose meaning is behind the legal text.

Article 112 Paragraph (1) of Law Number 35 Years 2009 concerning Narcotics, the level of ambiguity lies in the very broad meaning of the text so that it covers the reality of actions. As a result, many actions were netted with the legal text. This is very prone to criminalizing someone's actions, so that the principle of justice is difficult to enforce and will be trapped in legal certainty. Article 127 Paragraph (1) letter a of Law Number 35 Years 2009 concerning Narcotics in terms of general rules and in terms of legal texts, the meaning is clearer and more specific. The relationship between legal norms and legal texts is easier for someone to understand, especially law enforcement officers so that in its application it does not really require complicated legal interpretations.

Complexity

According to Julies L. Coleman and Brian Leiter (Bambang Sutiyo, Methods of Legal Discovery (Efforts to Realize a Certain and Just Law), Third Edition, UII Press, Yogyakarta 2009), the complexity of legislation will be more complicated if some of the rules conflict with each other. On the other hand, in such a situation the law becomes uncertain and interpretation ceases to be objective. Article 112 Paragraph (1) with Article 127 Paragraph (1) letter a of Law Number 35 Years 2009 concerning Narcotics, there has been a conflict of norms that can cause complex problems when applied to concrete cases. Conflicts will occur because the actions of the perpetrators of "abusers" at the same time are almost always accompanied by acts of "possessing, keeping, controlling or providing". Therefore, when facing a

concrete case, law enforcement officers are required to interpret the law wisely and wisely, to determine what criminal event was actually committed by the perpetrator of the crime.

Based on this in Law Number 35 Years 2009 concerning Narcotics, especially Article 112 Paragraph (1) and Article 127 Paragraph (1) letter a, there are problems in terms of intent, ambiguity and complexity so that in their application there are differences, especially Public Prosecutors, Legal Counsels, even Judges at every level. In its implementation, there are articles in the law that affect the legal system for narcotics crimes, namely Article 112 Paragraph (1) and Article 127 Paragraph (1) letter a. The application of the two Articles often creates confusion, this can be seen from the existence of several court practices which in the decision between Article 112 Paragraph (1) with the element "everyone who without rights or against the law owns, keeps, controls or provides Narcotics Category I is not a plant." " and Article 127 Paragraph (1) letter a with the element "every abuser of Narcotics Category I for himself" often occurs differences in the application of Article between law enforcers, whether investigators, Public Prosecutors, or judges, even the difference is also seen in the court itself, it is not uncommon for differences between court decisions of the first instance, the level of appeal, and the level of cassation, so that many narcotics cases file legal remedies which result in the handling of narcotics cases being protracted and dominating in terms of the quantity of handling criminal cases in Indonesia..

In addition to the problems in Law Number 35 Years 2009, other problems arose when the Supreme Court Circular Letter Number 1 Years 2017 was issued regarding the Implementation of the Formula for the Results of the 2017 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court which contained, among other things, in the event that the defendant was not caught. hand was using narcotics and the defendant found evidence of narcotics which were relatively small in number/weight and the result of the defendant's urine test was positive for methamphetamine, but the Public Prosecutor did not indict Article 127 Paragraph (1) of Law Number 35 Years 2009 concerning Narcotics, the defendant's actions The person is categorized as a Narcotics Abuser for himself while the qualification of the criminal act still refers to the indictment. With the existence of the SEMA, there are increasingly different interpretations between law enforcement officers and the defendants themselves, resulting in many narcotics cases being filed for legal action so that quantitatively they dominate the handling of cases. With the problems in Law Number 35 years 2009 regarding narcotics and SEMA Number 1 Years 2017, it has resulted in obstacles to law enforcement for narcotics crimes so that the number of narcotics crimes is still high so it is necessary to improve the legal substance of narcotics crimes.

Legal Structure

The existence of several weaknesses in Law Number 35 Years 2009 concerning Narcotics as the author stated in the previous discussion, seems to have an effect on law enforcement officials. The weakness of the law results in the application of different Articles between law enforcers, starting from the Articles that are applied at the investigation stage to the final decision. At the investigation stage it seems more likely to apply Article 112 or Article 127 simultaneously, as well as the indictment made by the

Public Prosecutor. When entering the trial at the stage of reading the demands, the Public Prosecutor must choose which Article will be proven in accordance with the facts of the trial. For the Public Prosecutor, for the sake of proof, it is certainly very "beneficial" to apply Article 112 because the actions of the perpetrator are easy to prove, otherwise it will be very "harmful" for the Legal Counsel or the defendant because it will be difficult to defend. At the stage of the decision made by the judge, on narcotics cases, especially those related to Article 112 and Article 127, there are differences in the application of the law between Judges of the First Level Court, Judges of the Court of Appeal, and Judges of the Court of Appeal. What often happens is that the Judges of the First and Appeal Courts apply Article 112 while the Judges of the Court of Cassation apply Article 127 so that these two Articles often occur not only at the decisions of the District Court but almost half of narcotics cases file legal remedies to the level of cassation. Law enforcers themselves do not have a common perception about narcotics abusers and abuses, which can be seen from the many legal remedies against narcotics cases, especially Article 112 and Article 127..

In some cases of narcotics crime there is inconsistency of the courts in deciding narcotics crimes, not infrequently narcotics crimes in the first and second level courts are decided with higher sentences but at the last level they get lighter decisions, so that they do not cause a deterrent effect for the perpetrators and cannot reduce drug crime. The difference in the application of Article by law enforcement officers also has an impact on the capacity of the Correctional Institution as a place for fostering prisoners. When the judge applies Article 112, the penalty is a minimum of four years, while when applying Article 127, the maximum penalty is four years. This long span of time has an effect on the inmates of the Correctional Institution. Correctional institutions often produce new perpetrators of narcotics abuse, inmates who were previously only users after being released as dealers or while in prison can become dealers. This astonishing fact was once stated by Asmin Fransiska, a human rights lecturer at the Faculty of Law at the Catholic University of Atma Jaya, it turns out that in prison some inmates can distribute and use narcotics. This is supported by the confession of the suspect with the initials A, he has been a dealer for approximately 3 months. After being released from prison for a drug user case, A turned into a dealer with a network of his former inmates. <https://joglosemarnews.com/2019/08/pengakuan-mantan-napi-yang-kini-jadi-bandar-narkoba-di-klaten-jaringan-dikendalikan-napi-di-lp-semarang-sekali-transaksi-rp-70-million/>, accessed on March 20, 2020, at 15.20 WIB.

Legal Culture

This legal culture is a network of values and attitudes related to law, thus determining when and why, or people turn to the law, or to government, or leave it altogether. Building a Legal Culture of Law Enforcement Society in the Eradication of Narcotics Crime (Study on the Birth of the National Narcotics Agency), ZAINAB OMPU JAINAH Faculty of Law, University of Bandar Lampung, Jl.ZA Pagar Alam No.26, Bandar Lampung accessed on April 9, 2020 at 12.10 WIB.) Legal culture can be seen from two sides:

- a. Culture / community culture
- b. Culture / culture of officers / apparatus

This study discusses the disparity of punishment so that in this case it will discuss the culture of the apparatus involved in the sentencing process which is imposed in this case the Judge. In the handling of narcotics equivalents, the punishment imposed on perpetrators of criminal acts has a difference in the application of the law. At the investigation stage which is the initial stage of the existence of a case, not a few investigations into narcotics crimes only stop at the lower level and cannot penetrate to the roots, for example investigators only process the perpetrators of narcotics crimes to the last perpetrator in this case who controls or uses narcotics, investigators rarely carry out the development of narcotics crimes to their peak level, even though it is very possible to do this with the authority and infrastructure owned by investigators that allow them to trace narcotics crime networks. This greatly affects the next process, namely in applying Articles suspected of perpetrators of narcotics crimes. When narcotics cases are only interrupted by the perpetrators of the crime below, it will be difficult to prove or apply the law as a dealer to the perpetrators of the crime. The culture of law enforcement, which seems unwilling or turning a blind eye to the larger circulation of narcotics and prefers to handle narcotics cases more easily, can lead to differences in the application of the law because existing cases and legal regulations are able to ensnare narcotics perpetrators even though does not reach into deeper events.

In addition to the legal culture of the apparatus, the legal culture of the community also influences the disclosure of narcotics cases. To reach deeper, community activity is also needed. So far, the public has also seemed indifferent to the existence of narcotics crimes even though Law Number 35 Years 2009 concerning Narcotics Article 104 has clearly stated "the community has the widest opportunity to participate in helping prevent and eradicate abuse and illicit trafficking of narcotics and precursors. Narcotics and Article 105 "The community has rights and responsibilities in efforts to prevent and eradicate abuse and illicit trafficking of narcotics and narcotic precursors, this is further clarified and emphasized that there is a criminal threat for people who know of a narcotic crime but do not report it to the authorities as referred to in Article 105. The provisions of Article 128 (for parents who do not report) and Article 131 (for anyone/anyone who knows of a narcotic crime). With the existence of several provisions in Law Number 35 Years 2009 concerning Narcotics, it is clear that for the prevention of narcotics crimes, it is not only necessary to have the role of law enforcement but also family members who are the smallest part of society and the wider community in general so that with more extensive disclosure of narcotics cases Large parties can reach deeper events and can assist the process of handling narcotics cases because they do not only stop at narcotics users or authorities.

In handling narcotics crimes, narcotics criminals often get punishment based on different court decisions. The same legal event can be prosecuted or decided by a different Article or conversely a different legal event is prosecuted or decided by the same Article. This resulted in many legal efforts in handling narcotics cases so that the handling became protracted which resulted in many narcotics prisoners in Correctional Institutions. Actually legal remedies are rights granted by law, but if you look closely it

turns out that the legal remedies proposed in handling narcotics crimes are due to differences in the application of the law caused by different interpretations of the law or the lack of harmony between law enforcers, especially in law enforcement. understand Article 114 paragraph (1), Article 112 paragraph (1) and Article 127 paragraph (1) letter a of Law Number 35 Years 2009 concerning Narcotics as a result of the weakness of the law itself.

The existence of differences in interpretation between law enforcers as described above resulted in narcotics crime perpetrators not infrequently getting punishment based on different court decisions. The difference in the decision has implications for the application of the sentence, which then also results in fragmentation and subsequent ineffectiveness as seen from the many repetitions of crimes by narcotics criminals and even those who are promoted from being users to narcotics dealers. Article 112 Paragraph (1) which states that a person without rights or against the law owns, keeps, controls, or provides Narcotics Category I, should be followed by the purpose or legal facts for what purpose so that with such clarity it does not cause multiple interpretations and is not used as Article reserve because actually some of the Articles in this Narcotics Law contain elements of possessing, storing, controlling, so that they can be imposed on all actions. (Ratna WP, Criminal Aspect: Abuse of Narcotics Rehabilitation Versus Prison, page 23, Legality, Yogyakarta, 2017.)

Based on the three examples of narcotics case decisions in the previous discussion, it can be seen that the disparity in sentencing in narcotics cases occurs because of differences in the application of the law between Judges of the First Level Court, Judges of the Appellate Level, and Judges of the Cassation Level, where Judges of the First Level Court and Judges of the Appellate Level Court for narcotics cases. methamphetamine with the amount of evidence under one gram but if at the time of being caught red-handed he was not using narcotics, he tended to apply Article 112 (criminal act of narcotics abuse) with a minimum penalty of four years, while the Judge of the Court of Cassation in the same case tended to apply Article 127 (criminal offense of drug abuse) with a maximum penalty of four years. From the two Articles, it is clear that there is a disparity in the criminal threats where in Article 112 the criminal penalty is a minimum of four years while in Article 127 the maximum penalty is four years so that the difference in the application of the two Articles will certainly greatly affect the criminal penalties for the two Articles.

The disparity in sentencing between Judges of the First Level Court, Appeal Level, to the Cassation Level in narcotics cases often occurs in the application of Article 112 and Article 127. Based on this in Law Number 35 Years 2009 concerning Narcotics, especially Article 112 Paragraph (1) and Article 127 Paragraph (1) letter a there are problems in terms of intent, ambiguity and complexity so that in its application there are differences in interpretation, especially Public Prosecutors, Legal Advisors, and even Judges at each level. The difference in interpretation can be seen from the ratio decidendi of the three examples of decisions in the previous discussion.

The difference in the application of the narcotics crime law as seen in the ratio decidendi of the judges of the First Level Court, Appellate Level, and Cassation Level in the previous discussion is related to the consideration of the application of the Supreme Court Circular Letter Number 04 Years

2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Institutions Medical Rehabilitation and Social Rehabilitation, as a guide for judges in the application of rehabilitation punishment which can only be imposed on the classification of criminal acts when caught red-handed, evidence of 1 (one) day use in this case is a maximum of one gram and Supreme Court Circular Number 1 Years 2017 concerning The implementation of the formulation of the results of the 2017 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court which contains, among other things, in the event that the defendant is not caught taking narcotics and the defendant is found to have narcotic evidence in the amount/fallow The question is relatively small and the results of the defendant's urine test are positive for methamphetamine, but the Public Prosecutor does not charge Article 127 Paragraph (1) of Law Number 35 Years 2009 concerning Narcotics, the defendant's actions are categorized as Narcotics Abusers for himself as in Article 127 Paragraph (1) letter a and the Supreme Court Circular Number 3 Years 2015 concerning the Implementation of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court, namely in part A number 1 which reads "Judges decide and examine cases must be based on the Public Prosecutor's Indictment Letter (Article 182 Paragraph 3 and 4 of the Criminal Procedure Code). That if based on the facts revealed at the trial it is proven Article 127 of Law Number 35 Years 2009 concerning Narcotics of which this Article is not charged, the defendant is proven to be a user and the number is relatively small (Supreme Court Circular Number 4 Years 2010 in conjunction with Supreme Court Circular Number 3 Years 2011) then the judge decides according to the indictment but may deviate from the special minimum criminal provisions by making sufficient considerations". Applying the law (regulations) directly to concrete events is not possible. The concrete events must be made into legal events first so that the legal regulations can be enforced. Sudikno Mertokusumo, the Discovery of an Introduction to the Law, Cahaya Atma Pustaka, Yogyakarta, 2018, pp. 47-48. Furthermore, it is said that the laws and regulations are incomplete and unclear. There are no complete and complete laws and regulations and clearly as clearly as possible. Therefore it must be met enforce the law by explaining, interpreting, or completing the legislation.

Based on the foregoing, it can be concluded that the cause of the disparity in sentencing by Judges of the Courts of the First Level, Appeals, and Cassation Levels is due to differences in the application of the law, especially with regard to Article 112 and Article 127 of Law Number 35 Years 2009 concerning Narcotics. When the Panel of Judges applies Article 112, the minimum criminal penalty is four years, while for Article 127 the maximum penalty is four years. The application of the different laws is due to the lack of clarity in Article 112 and Article 127 as described above so that it needs to be interpreted in its application which in the process creates different interpretations in applying the two Articles as well as in applying the Circular Letter of the Supreme Court Number 04 Years 2010 and Supreme Court Circular Number 1 Years 2017 and Supreme Court Circular Number 3 Years 2015 concerning Enforcement of the Formulation of the Results of the 2015 Supreme Court Chamber Plenary Meeting.

Conclusion

Based on the research that the author conducted, it can be concluded that the disparity in sentencing in narcotics cases occurs because of differences in the application of the law between judges of the First Level Court, Judges of the Appellate Level, and Judges of the Cassation Level, where the Judges of the First Level Court and Judges of the Court of Appeals for shabu type cases with the amount of evidence under one gram but if at the time of being caught red-handed he is not using narcotics, he tends to apply Article 112 (criminal act of narcotics abuse) with a minimum penalty of four years, while the Judge of the Court of Cassation in the same case tends to apply Article 127 (narcotics abuse) with a maximum penalty of four years. From the two Articles it is clear that there is a disparity in the criminal threats where in Article 112 the minimum penalty is four years while in Article 127 the maximum penalty is four years, so that with the difference in the application of the two Articles, it will definitely greatly affect the punishment for the two Articles.

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