Disparity of Judges' Decisions in the Case of Binary Option Affiliator Doni Salmanan Compared to Indra Kenz
(Decision Number 1/Pid.Sus/2023/PT Bandung vs Decision Number 117/Pid.Sus/2022/PT Banten)

Cahyo Tri Laksono[1*], Gelar Ali Ahmad[2]

[1]Faculty of Law, State University of Surabaya, Indonesia

[2] Faculty of Law, State University of Surabaya, Indonesia

[*] cahyo.1904@mhs.unesa.ac.id

Article	Abstract
	This study examines the issue of criminal disparity in two court decisions involving binary options affiliators: Doni Salmanan and Indra Kenz. The disparity lies in the differences in both principal and additional criminal sanctions, raising concerns about fairness and consistency in sentencing. The research aims to identify the judges' considerations that led to such disparity and analyze the contributing factors behind the differences in punishment. Using a normative legal research method with statutory and case approaches, the study applies a prescriptive analysis to formulate arguments. The findings show that the primary cause of disparity is the lack of minimum sentencing provisions, which grants judges wide discretion, as the applicable laws only stipulate maximum penalties. Contributing factors include both external elements—such as the nature of the crime, aggravating and mitigating circumstances, the defendant's demeanor during trial, and motives— and internal factors, particularly the legal framework itself. The study concludes that additional regulation is urgently needed, especially in the ITE Law (Law No. 19 of 2016), to guide the imposition of additional punishments. This is crucial given the increasing number of online trading fraud cases where assets are often returned to perpetrators or confiscated without clear legal direction. Therefore, the formulation of sentencing guidelines for additional penalties is recommended to ensure justice and prevent further harm to the public..

INTRODUCTION

Disparity in judicial decisions is defined as a difference in a decision but has the same criminal offense. It is undeniable that the disparity of decisions in criminal justice arises from various reasons, one of which is the freedom by judges to provide criminal law decisions that judges want. This is contained in Article 24 of the 1945 Constitution, which reveals that judicial power is an independent power in carrying out judicial functions to uphold law and justice based on the 1945 Constitution and this is also

stated in Article 1 of Law Number 48 of 2009 concerning Judicial Power which has the same sound regarding the freedom of judges in deciding a decision in criminal justice. Quoting the opinion of legal experts, namely Harkristuti Harkrisnowo, the disparity of decisions can be divided into 4 (four) categories, namely:

a. Disparity between the same criminal offense.
b. Disparity between criminal offenses that have the same level of seriousness.
c. Disparity between criminal offenses imposed by the same panel of judges.
d. Disparity between criminal offenses imposed by different panels of judges for the same criminal offense (Befiria Meike Rosandra and Pudji Astuti 2023).

The first example is the case of Doni Salmanan in Decision Number 1/Pid.Sus/2023/PT Bandung where the defendant was sentenced to 8 years imprisonment and the evidence was confiscated to the state. The sentence was due to the defendant's actions who registered as a Quotex Affiliator and obtained the Quotex registration link, namely https://bit.ly/Registrasiquotexvvipking-Salmanan, then the defendant promoted people to register as Quotex members at the link through the defendant's Youtube account with the Youtube account "KING-SALMANAN" with the URL https:// youtube.com/c/-KINGSALMANAN9 using his laptop and in his promotion using videos posted by the defendant, which on average contained the defendant's success in earning income from trading at QUOTEX.

And through Doni Salmanan's telegram group, namely Vip King Salmanan and Vip King Salmanan Chat Group And Quotex Kingsalmanan Signal Group, then the defendant also linked to YouTube content so that the members who were members of the group would play with the defendant, so that the members would deposit some money by topping up the deposit directly into the Quotex account and in the group chat the defendant also provided his analysis and gave advice to the members in playing the game on Quotex based on the experience gained by the defendant while trading on the Quotex application and the defendant also consciously made efforts to mix money from his activities as a Quotex affiliate and his assets in order to hide or disguise the origin of the money, as if or as if it came from legitimate income by using the money to buy several vehicle assets, houses and also transferring money to the defendant's wife as a result of the criminal act of spreading fake news about binary option trading.   The second case example is the defendant Indra Kesuma, also known as Indra Kenz, from Decision 117/Pid.Sus/2022/PT Banten, who was sentenced to 10 years imprisonment and the evidence was returned to the victim. The sentence was due to the defendant's actions, namely the defendant through his YouTube channel (link https://www.youtube.com/c/IndraKenz) uploaded video content entitled "HOW TO GET MONEY QUICKLY AND EASILY FROM BINOMO (TRADING 1 MINUTE GETS 3 MILLION)" through the

link: https://www.youtube.com/watch?v=pr6olL0vqoo&list=PLvfaOJvUQmtN3rq 38mq0yYCNPfhKJEQb&index=2 with video content including the defendant promoting fake news through a YouTube video saying that Binomo trading with 1 minute gets 3 million if you use his referral link and saying that Binomo is legal in Indonesia, and if you follow the defendant's affiliate referral link, you can be assisted in losing traders, and if you follow the techniques taught by the defendant in his education about Binomo trading, the traders/witnesses will win and make a lot of profit. Then the act was reported by the victim on the grounds that the victim who followed the guidelines in the video or content uploaded by Indra Kenz experienced more defeat or loss in Binomo trading so the victim chose to report the criminal act. That in order to disguise the Defendant's income obtained from Binomo profit sharing for the participation of the victim witnesses, the Defendant became an influencer on social media sites and created a business entity PT. Trading Course which organizes education in the field of trading.

Whereas in reality the Defendant's main source of income is through profit sharing obtained from the losses and wins of Binomo players who register through the Defendant's referral link and deposit money on the Binomo site. That the proceeds of Binomo trading profits obtained by the Defendant were used to purchase a number of assets in the form of houses, land, cars and luxury watches.

And based on the results of preliminary research conducted through a case approach with the two decisions whose sentences are quite far apart, the criminal acts committed by the two suspects, namely Doni Salmanan and Indra Kenz, are the same criminal act with different judges but the same criminal act, namely the crime of spreading false news accompanied by money laundering.

Although there is the same article and the weight of the case is almost the same, there are differences in the application of criminal sanctions and additional punishment. Especially in Decision Number 117/Pid.Sus/2022/PT Banten Indra Kenz and Decision Number 1/Pid.Sus/2023/PT Bandung, where the type of case has the same weight, but there is a difference in the period of 2 years and the treatment of the status of evidence is different.   The two decisions also have the same nature of harm or impact, namely causing material losses that are not small for many victims. This can be seen from Decision Number 117/Pid.Sus/2022/PT Banten Indra Kenz with a victim loss of Rp.83 billion, while in Decision Number 1/Pid.Sus/2023/PT Bandung Doni Salmanan the victim loss was 24 billion.

And in terms of the elements of the criminal acts committed by the defendants Indra Kenz and Doni Salmanan where the criminal elements that ensnare the two suspects have in common, namely the criminal act of spreading false news, in which the two suspects both made efforts to upload videos in the context of promoting binary option applications with the aim of attracting consumers and being dishonest

with their members in the promotion and so that it is said to fulfill the elements of spreading false news which resulted in consumer losses in electronic transactions.

Then the similarities in the elements of the crime of money laundering that exist in the two decisions where the two suspects, namely Indra Kenz and Doni Salmanan, in order to hide the assets resulting from criminal acts, do so by transferring, granting or transferring to other parties to disguise the proceeds of the criminal act itself so that it can be said to fulfill the elements of the crime of money laundering.

From some of these similarities, the application of sanctions produced in the decision should not differ much in terms of sanctions or treatment of evidence of the results of criminal acts, but in reality there is a difference in punishment, namely 2 years in prison with evidence confiscated by the state and not returned to the victim so that it is seen as causing injustice to victims and society.

This research focuses on analyzing the two decisions, namely Decision Number 117/Pid.Sus/2022/PT Banten Indra Kenz and Decision Number 1/Pid.Sus/2023/PT Bandung Doni Salmanan. In these two decisions, there is a time period that can be said to be quite far apart and the treatment of evidence resulting from criminal acts is very different even though they have the same case weight. Both are charged with Article 45A paragraph (1) in conjunction with Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Article 3 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering which can be identified at the final point before the verdict.

So that based on some of these explanations, the researcher aims to examine the basis of the judge's consideration that causes disparity and the factors that cause disparity in the two decisions through thesis research entitled: Disparity of Judges' Decisions in the Indra Kenz Binary Option Affiliator Case compared to Doni Salmanan (Decision Number 1/Pid.Sus/2023/PT Bandung vs Decision Number 117/Pid.Sus/2022/PT Banten).

Based on this background, the problem formulation is as follows:

1. What are the basic considerations of judges that cause criminal disparity in the two decisions?
2. What factors cause disparity in the verdict of Decision Number 1/Pid.Sus/2023/PT Bandung Doni Salmanan compared to Decision Number 117/Pid.Sus/2022/PT Banten Indra Kenz?

The purpose of this research is to find out the basis of the judge's consideration that causes disparity through a comparison of Indra Kenz and Doni Salmanan's decisions and to find out the factors that cause criminal disparity through a comparative analysis of appellate court decisions that cause disparity.

The benefits of this research are to contribute thoughts to the academic perspective especially on the development of criminal law topics related to Binary

Option scheme investments whose regulations have not been regulated in detail so that it is hoped that the comparative research of the decisions of the two cases can become a research reference for those concerned and the general public and as suggestions in the development of scientific references related to the topic. be a scientific reference related to the topic.

METHOD

The research method used by researchers in this study is to use normative juridical analysis, namely conducting legal research at the level of legal dogmatics by looking for literature studies ranging from books, articles, journals and theses as the main source in conducting research analysis. And for research conducted by researchers using two approaches, namely the *statute* approach and the case approach. The statutory approach is carried out by examining all laws and regulations related to the legal issues being analyzed. In addition, the case approach is an approach that uses a way of dissecting cases related to the issues at hand that have been determined by court decisions that have been declared legally binding (Peter Mahmud Marzuki 2005).

Legal materials used in this research are divided into 2, namely primary legal materials and secondary legal materials Primary legal materials are legal materials that are used as the main reference in research.

Primary legal materials used in research are as follows.
1. Constitution of the Republic of Indonesia 1945
2. Law Number 8 of 1981 (KUHAP)
3. Law Number 48 of 2009 concerning Judicial Power
4. Law Number 8 of 2010 concerning the Crime of Money Laundering
5. Law Number 19 of 2016 concerning Electronic Information Technology
6. Law Number 1 of 2023 concerning the Criminal Code
7. Decision Number576/Pid.Sus/2022/PN.Bale Bandung Doni Salmanan
8. Decision Number 1240/ Pid.Sus/ 2022/ PN.Tangerang Indra Kenz
9. Decision Number 117/ Pid.Sus/ 2022/ PT.Banten Indra Kenz
10. Decision Number 1/Pid.Sus/2023/PT Bandung Doni Salmanan

Secondary legal materials in this study are used as library materials used in supporting research arguments on problems in the form of draft laws, journals, previous research results, books, and other supporting sources. In this research, the analysis of existing legal materials is carried out by means of the prescriptive method. The prescriptive method is a research aimed at obtaining arguments to solve problems.

This method aims to produce arguments and concepts as prescriptive that already contain value and can be one of the considerations in resolving related research. Argumentation is carried out by researchers who aim to provide prescriptive or a conclusion to a legal event. (Peter Mahmud Marzuki 2005).

RESULTS AND DISCUSSION

The basis for the judge's consideration in Decision Number 1/Pid.Sus/2023/PT Bandung Doni Salmanan compared to Decision Number 117/Pid.Sus/2022/PT Banten Indra Kenz which caused disparity.

Article 4 paragraph (2) of Law Number 48 of 2009 which regulates judicial power states that the court is tasked with assisting in the search for justice and trying to overcome all obstacles and challenges in the judicial process in order to achieve a simple, fast and low cost trial. This means that judges in using their freedom or other terms, namely discretion, cannot use this power freely but are free which means that they are adjusted to the conditions that have been regulated in existing and applicable laws (Albertus Saluna Krishartadi 2016).

And in carrying out the judicial function, the judge has the main function of giving a decision on each case submitted to the judge, where the judge proves in a case whether the defendant is guilty or not through the existence of criminal evidence according to the applicable laws and regulations. In carrying out this function, the judge is given the freedom to decide a case that he decides fairly and wisely. (Andi Suherman 2019).

The judge's decision is the final stage of the judicial process where the judicial process starts from examining a criminal case until the issuance of a judge's decision. Through the judge's decision it is hoped that justice, the ultimate truth and human rights will be achieved as stated in the fifth Pancasila, namely "Social justice for all Indonesian people"(Putra 2017).

Decisions are divided into three, namely as follows: (Panggabean 2005)

1. Acquittal (*Vrijspraak)* Acquittal is a decision given to a defendant who is declared not guilty or there is no element of guilt or the defendant is not the subject referred to in the legislation.

   For example, if the defendant turns out to be a person who was ordered to do (doen plegen) according to Article 55 paragraph (1) to 1 of the Criminal Code; a person who has a mental disorder or mental illness according to Article 44 of the Criminal Code, is not a subject referred to by the law (for example, charged with Article 415 of the Criminal Code, even though it turns out that he is not a civil servant as referred to by that article), or with regard to the elimination of punishment due to the absence of guilt in him (in line with the principle of geen straf zonder schuld, no punishment without guilt).

2. Release from prosecution Release from prosecution (*ontslag van rechtsvervolging)* is imposed due to the fact that the act committed does not fulfill the elements of unlawful nature or is not in accordance with the actions formulated in the legislation.

   For example, in the event that the unlawful nature of an act is removed by the existence of an emergency *(noodtoestand)* according to Article 48 of the Criminal

Code, forced defense (Article 49 of the Criminal Code) or because of implementing the provisions of the law (Article 50 of the Criminal Code). Similarly, if at the trial what is proven is embezzlement (Article 372 of the Criminal Code), even though the defendant is charged with theft (Article 362 of the Criminal Code).

3. Criminalization

Sentencing is imposed if the elements of the criminal offense committed by the defendant are found to be fulfilled in accordance with what has been regulated in the legislation and the article charged.

However, the judge in issuing a decision is not only bound by statutory regulations but also considers elements of conscience or in other words, non-juridical   elements.

In issuing a decision, the judge is never separated from the element of consideration of the judge and the judge's consideration is divided into two, namely juridical and non-juridical considerations as follows.

Juridical Considerations

1. Public Prosecutor's Indictment   In the Indra Kenz case, the charges brought by the public prosecutor were the crime of gambling (Article 45 paragraph (2) Jo Article 27 paragraph (2) of Law Number 19 of 2016 concerning gambling then the crime of spreading false news (Article 45 paragraph (1)) Jo Article 28 paragraph (1) of Law Number 19 of 2016, the crime of fraud (378 Criminal Code) and the crime of money laundering (Articles 3 and 4 of Law No.8 of 2010) and Indra Kenz was prosecuted. In the case of Doni Salmanan, the prosecutor charged the crime of spreading false news (Article 45 paragraph (1)) Jo Article 28 paragraph (1) of Law Number 19 of 2016, the crime of fraud (378 Criminal Code) and the crime of money laundering (Articles 3 and 4 of Law No.8 of 2010) and the defendant was charged with the cumulative alternative charges, which means that the judge can choose several charges to be proven and if one of them has been proven then the charges on the other layers do not need to be proven again. Year 2010) and the defendant was charged with an alternative cumulation charge which means that the judge can choose several charges to be proven and if one has been proven then the charges on the other layers do not need to be proven again. From these charges, the two verdicts stated that the elements of the charges were similar, namely the act of spreading false news (Article 45 paragraph (1)) Jo Article 28 paragraph (1) of Law Number 19 of 2016 and the Crime of Money Laundering (Article 3 of Law Number 8 of 2010).

2. Criminal Charges

The charges in the Indra Kenz case were that the defendant was charged with (Article 45 paragraph (1) Jo Article 28 paragraph (1) of Law Number 19 of 2016 concerning the Spread of Fake News and Article 3 of Law Number 8 of 2010 concerning Money Laundering with a prison sentence of fifteen years imprisonment with a fine of ten billion and the evidence was declared to be returned to the victim's association, while for the Doni Salmanan case the charges were (Article 45 paragraph (1) Jo Article 28 paragraph (1) of Law Number 19 of 2016 concerning the Spread of Fake News and Article 3 of Law Number 8 of 2010 concerning Money Laundering).Law Number 19 of 2016 concerning the Spread of False News and Article 3 of Law Number 8 of 2010 concerning Money Laundering with a sentence of imprisonment for thirteen years imprisonment with a fine of ten billion rupiah and the evidence is declared returned to the victim and if there is a remaining spoil then it is taken by the state.

3. Witness Statement and Defendant's Statement

   Whereas Indra Kenz in Decision Number 117/Pid.Sus/2022/PT Banten related to the defendant's testimony that the defendant admitted his actions frankly and asked for leniency, and the defendant had family responsibilities, had never been sentenced, and his property had been confiscated, therefore he had been impoverished, while in the case of Doni Salmanan in Decision Number 117/Pid.Sus/2022/PT Banten that he did not question some of the incriminating testimony or expert testimony and only questioned the length of sentence and the status of evidence.

4. Evidence

   Regarding the evidence submitted in the Indra Kenz case, which was basically the result of a criminal act, evidence number one to number two hundred and fifty-eight was recorded and the evidence was declared returned to the victim. Whereas in the case of Doni Salmanan was submitted with evidence as evidence number one to evidence number one hundred and thirty-one and the evidence was declared seized for the state.

5. Rules of Crime

   And the rules in the criminal act of spreading false news are regulated in (Article 45 paragraph (1)) Jo Article 28 paragraph (1) of Law Number 19 Year 2016 which stipulates the following: *"Every person who intentionally and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).*   And for the rules of the crime of money laundering in accordance with what is charged in the two decisions which use articles 3 and 4 of Law Number 8 of 2010 which reads as follows:

(3)*" Every person who places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges for currency or securities or other actions on Assets that he knows or reasonably suspects are the proceeds of a criminal offense as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah)."*   (4)*" Every person who conceals or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of Assets which he/she knows or reasonably suspects to be the proceeds of a criminal offense as referred to in Article 2 paragraph (2).*

Criminal offense as referred to in Article 2

paragraph (1) shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiahs).

In addition to juridical considerations, judges must also always pay attention to non-juridical considerations in determining a decision and this is described as follows.

1. Nature of Criminal Offenses   In the criminal acts of the two decisions, the researchers categorized them as serious category violations because the level of loss produced in the two decisions was of very large material value with not a few victims.

   This can be seen from Decision Number 117/Pid.Sus/2022/PT Banten with the defendant Indra Kenz who harmed 144 victims with a total material loss of eighty-three billion rupiahs, while reviewed from Decision 1/Pid.Sus/2023/PT Bandung with the defendant Doni Salmanan harmed 142 victims with a total material loss of twenty-four billion three hundred sixty-six million six hundred sset 77 at twenty-five thousand seven hundred eighty-two rupiahs so that it can be said to have the same nature of harm contained in the criminal acts in the two decisions.

2. Circumstances and atmosphere at the time of committing the criminal offense (aggravating and mitigating factors)

   In Decision Number 117/Pid.Sus/2022/PT Banten with the defendant Indra Kenz, there were no aggravating factors and mitigating factors, namely the First Level, that the defendant admitted his actions frankly and asked for leniency, and the defendant had family responsibilities, had never been sentenced, and his property had been confiscated, therefore he had been impoverished, while in Decision 1/Pid.Sus/2023/PT Bandung with the defendant Doni Salmanan, the aggravating factor is that the defendant provided dishonest information in promoting the Quotex platform to his

members and hid the percentage of affiliate profits, then the defendant has succeeded in inviting an estimate of 25,000 (twenty-five thousand) people to register for Quotex through the defendant's link / Youtube link "KINGSALMANAN" with the URL https://Youtube-com/c/KINGSALMANAN then the members (142 people) lost the money deposited into the QUOTEX account with a total of approximately Rp.24.366.695.78..366,695,782 (twenty four billion three hundred sixty six million six hundred ninety five thousand seven hundred eighty two rupiah); and the Defendant has enjoyed the proceeds of his crime either in the form of money or luxury goods that have been legally confiscated and there are no mitigating factors.

3. The attitude of the defendant during the examination of the case and in the trial of the defendant Indra Kenz honestly admitted all of his actions so that he received leniency, while in the trial of Doni Salmanan the defendant did not admit his actions, so there was a difference in attitude in the two decisions which influenced the judge's decision in sentencing the defendant.

4. Reasons for committing the criminal offense
   The two defendants identified as binary option affiliators, both quotex and binomo, both aim to enrich themselves by getting a lot of profit from the percentage of defeat of members or members who are members of the member *vip* of the two defendants, which is suspected that the activities carried out by binary option affiliators are criminal acts of spreading false news to members or members who are members of the affiliation of the two defendants.

From several bases that are used as the judge's consideration, the researchers found that the basis for the judge's consideration that causes disparity is the main factor, namely the legal basis or rules that cause disparity in Decision Number 1/Pid.Sus/2023/PT Bandung compared to Decision Number 117/Pid.Sus/2022/PT Banten, namely the absence of certain minimum provisions so that there is a difference in the length of time of punishment which causes disparity and judges have their own considerations according to the case position on a problem using article 12 of the Criminal Code which regulates the freedom of judges in determining the type of criminal offense and the severity to be imposed in the verdict and is associated with the context of research where each judge both uses the rules of article 45 A paragraph (1) of the ITE Law and article 3 of the Anti-Money Laundering Law as the rules imposed in the crime of spreading false news accompanied by money laundering.

Factors causing disparity in Decision Number 1/Pid.Sus/2023/PT Bandung of Doni Salmanan compared to Decision Number 117/Pid.Sus/2022/PT Banten

In Decision Number 117/Pid.Sus/2022/PT Banten Indra Kenz compared to Decision Number 1/Pid.Sus/2023/PT Bandung Doni Salmanan, several similarities can be identified starting from the type of criminal offense, namely the crime of spreading false news and the crime of money laundering.

Then there is a similarity in the nature of the harm in the two decisions where the losses suffered by the victims are very large and the number of victims is not small so that it can be said to have the same nature of harm in terms of the chronology of events where in decision number 1/Pid.Sus/2023/PT Bandung with the defendant Doni Salmanan with a total loss of approximately Rp.24.366.695.78.366,695,782 (twenty-four billion three hundred sixty-six million six hundred ninetyfive thousand seven hundred eighty-two rupiah) with 142 victims while in decision number 117/Pid.Sus/20222/PT Banten with the defendant Indra Kenz with a loss of Rp.83 billion (approximately eighty-three billion rupiah) so that it can be said to have the same nature of danger.

Then the similarity of the elements of the crime in terms of the elements of the indictment is fulfilled where the two decisions with the defendants, namely Doni Salmanan and Indra Kenz, who were both identified by the judge's decision according to the chronology of events as affiliators of the binary option scheme who both spread fake news via the internet with their social media accounts coupled with the crime of money laundering, the proceeds of which were used by the two perpetrators to buy luxury goods so that the elements of the two crimes were fulfilled.

As for the differences, it can be seen in the imposition of punishment in the two decisions, which comes from the judicial process, namely the statutory factors in Indonesia associated with the freedom of judges to determine the type of criminal offense and the severity to be imposed in the verdict and associated with the research context where the crime of spreading false news that results in consumer harm in electronic transactions, namely Law Number 19 of 2016 article 45 a paragraph (1) only contains a maximum threat of a maximum of 6 years in prison. And Money Laundering Law Number 8 of 2010 in articles 3 and 4 also only contains the maximum threat of imprisonment, namely 20 years in prison and in Decision 1/Pid.Sus 2023/PT Bandung / Doni Salmanan received a sentence of 8 years in prison while in Decision 117/Pid.Sus 2022/PT Banten Indra Kenz received a sentence of 10 years in prison. so that the measure of punishment is entirely up to the discretion of the judge.

Then another thing that is highlighted is the difference or disparity in additional punishment that can be identified in the judge's consideration related to the status

of evidence in the two decisions and this can be identified in the judge's consideration in Decision 1/Pid.Sus 2023/PT Bandung / Doni Salmanan the judge was guided by Article 46 paragraph (1) of the Criminal Procedure Code which states as follows:

"*Objects subject to confiscation shall be returned to the person or persons from whom the assets were confiscated, or to the person or persons most entitled if:*

   a. *The interests of investigation and prosecution no longer require it;*
   b. *The case is not prosecuted due to insufficient evidence or does not constitute a criminal offense;*
   c. *The case is set aside in the public interest or the case is closed by law, except if the goods were obtained from a criminal offense or used to commit a criminal offense.*

From several comparisons of the decisions of the two cases between decision number 117/Pid.Sus/20222/PT Banten and decision number 1/Pid.Sus/2023/PT Bandung, the Panel of Judges interpreted the status of evidence in the Doni Salmanan case to be confiscated because it was the result of the acquisition of a criminal act, namely the crime of money laundering, whose criminal origin was derived from the spread of false news in the binary option scheme.

Whereas in the case of Indra Kenz the judge uses his authority or is referred to as discretion with the space of freedom of judges given by the state including freedom of trial, freedom from outside interference, freedom of expression in the context of developing practical law, freedom to explore legal values according to a sense of justice in society, including the freedom to deviate from the provisions of written law if it is considered not in accordance with the sense of justice in society.(Cut Anggiya Fitri and Mohd. Din 2018)

The form of this action is that the panel of judges decided to return the evidence obtained from the criminal act of spreading false news to be returned to the victim's association in the Indra Kenz case.   And from the description of both similarities and differences, there is a disparity in the two decisions. Quoting the opinion of Harkristuti Harkrisnowo, it is included in the category of disparity of the same criminal offense with different judges. Both decisions have the same criminal offense, namely the crime of spreading false news and the crime of money laundering. Launching from several expert opinions, there are many views on the factors that cause disparity. And for that, it is described as follows.

According to Sudarto, the factors causing disparity are internal factors and external factors originating from judges due to the absence of specific sentencing guidelines in the Criminal Code rules so that each judge's decision depends on the judge's own factors. This internal and external nature is difficult to separate, because it has been integrated as an attribute of a person referred to as *"human equation" or "personality of the judge"* (Judge's View) in a broad sense which involves the influences

of social background, education, religion and consideration of the judge in it. (Henry and Wibowo 2018).

And if it is based on the opinion of the expert, it can be said that the factors causing disparity are related to the analysis conducted by the researcher, namely external factors and judges' considerations that significantly play a role as the main factor causing criminal disparity in both the main and additional punishment, namely from an external perspective starting from the nature of the criminal offense committed by the two defendants, aggravating and mitigating factors at the time of trial, the attitude of the defendant during the trial and the reasons for committing a criminal offense as described in the reasoning above.

Meanwhile, according to the opinion of Muladi and Barda Nawawi, the cause of the disparity of punishment in judges' decisions always stems from the legal system itself. In the Indonesian criminal law system, judges have very broad freedom to choose the type of punishment (straafsoort) they want, related to the use of an alternative system in criminal punishment under the law. (Gulö and Muharram 2018).

In addition, judges also have the freedom to choose the severity of the punishment *(strafmaat)* to be imposed, because what is determined by the law is only the maximum and minimum weight, as regulated in Article 12 letter (a) of the Criminal Procedure Code which allows disparity of decisions in the imposition of punishment with the provision of imprisonment for as low as 1 (one) day and as long as life. So that this rule causes differences between the panel of judges when deciding a case even though there is an equal weight of the case. The problem of criminal disparity will continue to occur due to the distance between the minimum criminal sanction and the maximum criminal sanction. The process of drafting laws and regulations carried out by the legislative body as the legislator is also very influential on criminal disparity, due to the absence of standards or benchmarks in formulating a criminal sanction (Ulfa Arifia and Gultom 2023).

And the author's opinion that as the main factor causing disparity according to the expert opinion is in accordance with the results of research related to the factors causing criminal disparity in both additional and main punishment where in terms of the rules governing the rules in the context of the rules discussed in the two decisions, namely Article 45 A paragraph (1) of the Electronic Information and Transactions Law and Article 3 paragraph (8) of the Money Laundering Crime Law only contains the maximum threat in the imposition of punishment so that it becomes one of the factors causing disparity. And also related to the disparity in additional punishment in the judge's decision between the cases of Indra Kenz and Doni Salmanan related to the status of evidence in the criminal offense, which is a different factor is the judge's consideration in the two decisions where in the case of Indra Kenz, The Panel of Judges considered the sociological aspect by looking at

the previous decision where the status of Indra Kenz's evidence was confiscated by the state due to gambling content so that the Panel of Appeal Judges stated in the appeal decision to return the evidence to the victim because the element of spreading fake news was not gambling and did not fulfill one of the offenses in the previous decision (first level court decision) which stated that it was confiscated because it was the result of spreading fake news containing gambling. Whereas in the case of Doni Salmanan the judge looked at the juridical aspect where the judge was guided by article 46 of the Criminal Procedure Code related to the treatment of evidence and asset forfeiture with article 39 of the Criminal Procedure Code that the evidence was produced by the defendant from the criminal act of spreading false news with the binary option scheme so that it could be confiscated by the state. confiscated by the state.

From the two judges' considerations related to additional punishment in the two decisions related to the status of evidence, there are differences due to the absence of additional criminal guidelines that specifically regulate the two criminal acts, causing disparities in additional punishment. And for this reason, it is necessary for additional arrangements related to the regulation of additional punishment in the Electronic Information Technology Law (Law Number 19 of 2016) considering that there are many cases that harm the community related to ITE crimes in the context of online trading crimes, but the status of evidence is actually confiscated or returned to the suspect due to the absence of additional criminal guidelines which are unfair to victims of crime so that they have a negative impact, namely the status of evidence.

This by the researcher means that the judge has the freedom or so-called discretion to determine additional punishment based on the consideration of each judge in the relevant decision.

CONCLUSION

1. The basis of the judge's consideration that caused the disparity in Decision Number 1/Pid.Sus/2023/PT Bandung compared to Decision Number 117/Pid.Sus/2022/PT Banten, namely the absence of certain minimum provisions so that there is a difference in the length of time of punishment that causes disparity and judges have their own considerations according to the case position on a problem using article 12 of the Criminal Code which regulates the freedom of judges in determining the type of criminal offense and the severity to be imposed in the verdict and is associated with the context of research where each judge equally uses the rules of article 45 A paragraph (1) of the Electronic Information Transaction Law and Article 3 of the Law on Money Laundering as the rules imposed in the crime of spreading false news accompanied by money laundering.

2. Factors that cause criminal disparity are factors of the existing rules in the criminal offense where the two rules, namely the criminal act of spreading false news and the criminal act of money laundering, only contain the maximum threat of punishment then internal factors originating from the judge himself and external factors which include the background of the defendant, aggravating and mitigating factors and so on.

Suggestion

There needs to be additional arrangements related to the regulation of additional punishment in the ITE Law (Law Number 19 of 2016) considering that there are many cases that harm the community related to ITE crimes in the context of online trading crimes, but the status of evidence is actually confiscated. However, the status of evidence is actually confiscated or returned to the suspect due to the absence of additional sentencing guidelines which are considered unfair to victims so it is necessary to immediately make additional guideline

REFERENCES

Albertus Saluna Krishartadi. 2016. "FACTORS CAUSING CRIMINAL DISPARITY IN THEFT CASES IN WONOSARI DISTRICT COURT." Journal of Law

Andi Suherman. 2019. "IMPLEMENTATION OF JUDGE INDEPENDENCE IN THE EXERCISE OF JUDICIAL POWER." SIGn Jurnal Hukum 1(1):42-51. doi: https://doi.org/10.37276/sjh.v1i1.29.Befiria

Meike Rosandra, and Pudji Astuti. 2023. "DISPARITY IN SENTENCING DECISIONS NUMBER 3/PID.SUS/2021/PN. RAN AND NUMBER 494/PID.SUS/2019/PN.SPT REGARDING INSULT." Novum Journal 163-73. doi: https://doi.org/10.2674/novum.v0i0.50150.

Cut Anggiya Fitri, and Mohd. Din. 2018. "DISPARITY OF ADDITIONAL CRIMINAL VERDICTS ON THE SEIZURE OF EVIDENCE BELONGING TO THIRD PARTIES IN FORESTRY CRIMES." Student Scientific Journal of Criminal Law 2: 841-54.

Djanggih, Hardianto, and Nasrun Hipan. 2018. "Judges' Consideration in Social Media Defamation

Cases (Review of Decision Number: 324/Pid./2014/PN.SGM)." Journal of Legal Research De Jure 18(1):93. doi: 10.30641/dejure.2018.v18.93-102.

Gulö, Nimerodi, and Ade Kurniawan Muharram. 2018. "Disparity in Criminal Sentencing." Volume 47(3):215-27.

Henry, Encep, and Adhi Wibowo. 2018. "THE DISPARITY OF JUDGES'

DECISION IN IMPOSING PUNISHMENT IN NARCOTICS

CRIME." Journal of Swara Justisia 2(18).

Panggabean, Mompang L. (Mompang Lycurgus). 2005. Principles of penitentiary law in Indonesia. UKI Press.

Peter Mahmud Marzuki. 2005. Legal Research Revised Edition. 12th ed. Jakarta: Kencana Prenada Media Group.

Putra, Yagie Sagita. 2017. "THE APPLICATION

OF THE ULTRA PETITA PRINCIPLE IN CRIMINAL PROCEDURE LAW VIEWED FROM THE ASPECT OF LEGAL CONSIDERATION OF CRIMINAL CASE DECISIONS." UBELAJ 1(1):14-28.   doi: https://doi.org/10.33369/ubelaj.2.1.14-28.

Santi, Livia Musfika. 2021. "Factors Causing Criminal Disparity in the Consideration of Judges' Decisions Against Perpetrators of the Crime of Aggravated Murder."   Verstek   7(2).   doi: 10.20956/verstek.v7i2.xxxx.

Toliango, Fitriani. t.t. "THE DISPARITY OF PUNISHMENT FOR DRUG ABUSE."

Ulfa Arifia, Maria, and Binsar M. Gultom. 2023. "Efforts to Minimize Disparity in Judges' Decisions." Syntax Transformation 4(1). doi: 10.46799/jst.v4i1.677.