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**THE APPLICATION OF DIFFERENT CRIMINAL SANCTIONS  
AGAINST DRUG ABUSERS IS CONNECTED WITH ARTICLE  
112 PARAGRAPH (1) OF LAW NUMBER 35 OF 2009  
CONCERNING NARCOTICS  
(Study of Decision No. 203/Pid.Sus/2021/Pn.Blt and  
295/Pid.Sus/2021/Pn.Blt)**

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**Abstrack:** *The application of different criminal sanctions or criminal disparities is the application of criminal sanctions, in this case the application of criminal sanctions that are not the same or for criminal acts whose dangerous nature can be compared without a clear basis for awarding them. The problem raised in this study is how the Judge considers in applying different criminal sanctions against narcotics abusers in decision number 203/Pid.Sus/2021/Pn.Blt and number 295/Pid.Sus/ 2021/PN.Blt and what are the factors that result in differences in the application of criminal sanctions to the two decisions above. This study uses a normative juridical approach. The results of this study are the Judge's considerations in decision number 203/Pid.Sus/2021/Pn.Blt The Judge based on the legal facts revealed at the trial that the Defendant Yamsul Arifin was an abuser for himself so that the Judge in applying criminal sanctions deviated from special minimum criminal provisions in Article 112 paragraph (1), while the Judge's consideration in decision number 295/Pid.Sus/2021/Pn.Blt that the Defendant Elysa Sadola is a trafficker so the Judge continues to apply a sentence between the minimum and maximum limits specifically in Article 112 paragraph (1) Law Number 35 of 2009 concerning Narcotics. Then the factors that result in the application of different criminal sanctions against narcotics abusers in the two decisions are differences in legal facts revealed in court, there are multiple interpretations in Article 112 paragraph (1), discretion or freedom of judges, and the absence of sentencing guidelines.*

**Keywords:** *Criminal Disparity, Narcotics Abuse, Decision Court*

## **1. Introduction**

Crime occupies a central position in a criminal justice system. This is because the conviction will have far-reaching consequences, both for the perpetrators of the

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crime itself and for society as a whole.<sup>1</sup> The application of different criminal sanctions or in criminal law known as criminal disparity (*Disparity Of Sentencing*) is a problem that has long occurred in the process of law enforcement in Indonesia. The application of different criminal sanctions hereinafter referred to as criminal disparity is considered a problem that disturbs the criminal justice system even this criminal disparity does not only occur in Indonesia, but almost the whole world experiences it.

Muladi emphasized that criminal disparity is the application of crime (*Disparity of Sentencing*) in this case a different or not the same *offence* application or to criminal acts whose dangerous nature can be compared without a clear basis for granting.<sup>2</sup> More specifically, according to Harkristuti Harkrisnowo, criminal disparities can be classified into one of several categories:<sup>3</sup>

1. Disparity between the same offenses;
2. Disparity between offenses of equal severity;
3. Criminal disparities imposed by a panel of Judges;
4. Disparity between sentences imposed by different panels of Judges for the same offense.

In Indonesia, the application of different criminal sanctions or criminal disparities is also often associated with the independence of judges or the discretion of judges. Independent judicial power is called discretion or judiciary that is free from interference from any party is the ability of the Judge to decide a case without interference or intervention from any party.

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<sup>1</sup> Muladi and Barda Nawawi Arief, *Criminal Theories and Policy*, PT. Alumni, Bandung, 2010, p.52

<sup>2</sup> *Ibid*

<sup>3</sup> Harkristuti Harkrisnowo, *Reconstruction of the Concept of Penalties: A Lawsuit against the Legislative and Penal Process in Indonesia, Inaugural Address of Permanent Professor in Criminal Law*, Faculty of Law Indonesia, Jakarta, March 8, 2003, p.23

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*"Judicial Power is the power of an independent State to administer justice to uphold law and justice based on Pancasila, for the implementation of the State of Law of the Republic of Indonesia".<sup>4</sup>*

An independent judiciary must ensure the implementation of fair, fair trials and ensure legal certainty in society based on applicable law. Judges have freedom, but their powers are limited by laws and regulations.

On the one hand, criminal disparity is part of the judge's discretion in decision making, but on the other hand, this criminal disparity also causes dissatisfaction even among prisoners and the wider community, causing problems for law enforcement in Indonesia. Inequality that is too stark without a clear basis in applying criminal sanctions to perpetrators of crimes is fatal in the context of *"correction administration"*. Prisoners who, after comparing crimes, feel they are victims of *"the judicial caprice"* become prisoners who do not respect the law, even though respect for the law is one of the goals of punishment.

As a result, serious problems will arise because it will be both a sign and a manifestation of the inability of the system to achieve equality of justice in a country ruled by the rule of law and will also undermine public confidence in the criminal justice system.<sup>5</sup> In addition, social jealousy and also negative paradigms arise from the community in the judiciary, which is further manifested in the form of indifference to law enforcement in society.

Drug abuse is one of the problems that increasingly occur in the community. Drug abuse is also a criminal offense that is no longer a new problem in Indonesia. Indonesia itself already has regulations related to the practice of narcotics abuse,

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<sup>4</sup> Law Number 48 of 2009 concerning the Second Amendment to Law Number 35 of 1999 concerning the Principal Power of the Judiciary, Article 1 paragraph (1)

<sup>5</sup> Muladi and Barda Nawawi Arief, *Op Cit*, p.54

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namely Law Number 35 of 2009 concerning Narcotics.<sup>6</sup> Abuser in this Law is defined as a person who uses narcotics without rights or against the law.<sup>7</sup> While the definition of narcotics itself according to Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which reads:

*"Narcotics are substances or drugs of plant or non-plant origin, whether synthetic or semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to relieve pain, and can give rise to dependence, which are distinguished in the table as attached to this Law".<sup>8</sup>*

This law classifies narcotics into three groups, namely Group I, Group II, and Group III, and classifies various types of narcotics into their respective groups. The purpose of Law Number 35 of 2009 concerning Narcotics is to regulate the use of narcotics and eradicate crimes related to narcotics which are increasing in number. The law also provides for special minimum criminal sanctions with the intention of providing a strong deterrent effect for drug offenders and for others as a special and general form of prevention.

The law enforcement process is one of the important aspects in eradicating narcotics crimes. The problem of applying different criminal sanctions or criminal disparities also often arises in the enforcement of drug crimes. When it is found that the judge's decision is very far from the provisions of existing laws and regulations, in addition, the criminal verdict handed down sometimes differs from one convict to another even though the case is the same and on the basis of the article applied is also the same as in article 112 paragraph (1) which contains provisions for imprisonment and fines, which reads:

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<sup>6</sup> Rodliyah and H.Salim HS, *Special Criminal Law Elements and Criminal Sanctions*, PT. Raja Grafindo Persada, Depok, 2023, p.85

<sup>7</sup> Law Number 35 of 2009 concerning Narcotics, Article 1 paragraph (15)

<sup>8</sup> Law Number 35 of 2009 concerning Narkotika, Article 1 paragraph (1)

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*"Any person who without rights or against the law possesses, stores, controls, or provides non-plant Class I Narcotics, shall be punished with a prison sentence of not less than 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp.800,000,000.00 (eight hundred million rupiah) and a maximum of Rp.8,000,000,000.00 (eight billion rupiah)."*<sup>9</sup>

If described the criminal provisions in article 112 paragraph (1), namely imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years imprisonment, and a fine of at least Rp.800,000,000,00 (eight hundred million) and a maximum of Rp.8,000,000,000.00 (eight billion rupiah). So that based on the criminal provisions in article 112 paragraph (1) it contains imprisonment and fines with a *special minimum threat*. However, there are different judges' decisions on the application of criminal sanctions in the article that cause criminal disparities, and there are even judges' decisions that apply crimes under special minimum threats, this will certainly increase the distance of disparities that occur.

This research is a study on the application of different criminal sanctions against drug abusers related to the basic criminal provisions in article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The object of this study is the application of different criminal sanctions against drug abusers in decisions number 203/Pid.Sus/2021/Pn.Blt and number 295/Pid.Sus/2021/Pn.Blt.

In decision number 203/Pid.Sus/2021/Pn.Blt with the defendant on behalf of Yamsul Arifin, he was charged by the Public Prosecutor with an alternative charge, namely article 114 paragraph (1) or article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the Judge chose article 112 paragraph (1) as the basis for criminal application to the case. In the verdict, the Judge did decide that the defendant

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<sup>9</sup> Law Number 35 of 2009 concerning Narcotics, Article 112 Paragraph (1)

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was legally proven and declared guilty of committing a crime without rights or against the law and possessing class I narcotics, but in the decision the Judge only sentenced him to imprisonment for 1 (one) year and 6 (six) months and a fine of Rp.800,000,000.00 (eight hundred million rupiah) provided that if the fine is not paid it is replaced with imprisonment for 2 (two) months.

Meanwhile, in decision number 295/Pid.Sus/2021/Pn.Blt with the defendant on behalf of Elysa Sadola, she was also charged by the Public Prosecutor with alternative charges, namely article 114 paragraph (1) or 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The judge also has article 112 paragraph (1) as the basis for criminal application in the case. In this decision, the Judge also decided that the defendant was legally proven and declared that he committed a crime without the right or against the law to control class I narcotics, but unlike the previous decision in this decision, the Judge sentenced him to imprisonment for 4 (four) years and 3 (three) months and a fine of Rp.800,000,000.00 (eight hundred million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 1 (one) month.

So it can be seen that there is a different application of criminal sanctions to perpetrators of drug abuse in the two rulings, namely the prison penalty. The disparity that occurs in the two decisions is very interesting to examine, especially that the two perpetrators of drug abuse are charged with the same article by the Judge, namely Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, but the application of prison sanctions is different even one of them is sentenced to imprisonment under the *specific minimum* threat in this Law.

According to the author, at least based on the article applied by the Judge, namely in article 112 paragraph (1) in decision number 203/Pid.Sus/2021/Pn.Blt on behalf of Yamsul Arifin, he should be sentenced *to a minimum* of 4 (four) years in prison

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according to the criminal provisions in the article, so as not to cause criminal disparities that are too far. Criminal disparity that is too far apart will cause injustice, dissatisfaction for convicts and society in general will also have a negative impact on legal certainty and public confidence in the law and judicial institutions. Therefore, this study is needed to determine the disparity that occurs between the two decisions that are the object of this study has a clear basis for giving, considering that criminal disparities may occur as long as they are on a clear basis for granting.

Based on the background mentioned above, the author is interested in conducting research with the research title **APPLICATION OF DIFFERENT CRIMINAL SANCTIONS AGAINST DRUG ABUSERS IS CONNECTED WITH ARTICLE 112 PARAGRAPH (1) OF LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS (Study of Decision Number 203 / Pid.Sus / 2021 / Pn.Blt and 295 / Pid.Sus / 2021 / Pn.Blt).**

## 2. Method

In this study, the author uses the normative juridical approach method. The reason the author uses this method is because the main data used is secondary data, namely data obtained based on literature studies, and supporting data is primary data in the form of data obtained based on field studies.

The specification in this study is descriptive analytical, the reason for choosing this specification is that it aims to describe a general picture of a reality that occurs in the field or a concrete explanation of the state of the object or problem to be studied without drawing general conclusions.

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### 3. Analysis or Discussion

#### 3.1. The judge's consideration in applying different criminal sanctions to drug abusers in Decision Number 203/Pid.Sus/2021/PN.Blt and Decision Number 295/Pid.Sus/2021/PN.Blt.

##### A. Analysis of the judge's consideration in applying criminal sanctions to drug abusers in Decision Number 203/Pid.Sus/2021/PN.Blt An.Yamsul Arifin.

According to the author's analysis of the judge's considerations in applying the crime below the minimum provision, this special can be seen from various sides. In terms of legal certainty, the application of criminal sanctions imposed by the Judge is not in accordance with *the specific minimum* penalties stipulated in the formulation of Article 112 paragraph (1) which essentially regulates the threat of imprisonment *of a minimum* of 4 (four) years and *a maximum* of 12 (twelve) years, while in decision number 203/Pid.Sus/2021/Pn.Blt the Defendant is applied to imprisonment of 1 (one) year and 6 (six) months. The existence of criminal application below the *minimum* limit of the criminal provisions in Law Number 35 of 2009 concerning Narcotics by the Judge cannot be justified according to the principle of legality (*nulla poena sine lege*). Although in his consideration, the Judge has paid attention to the Supreme Court Circular Number 3 of 2015 and Supreme Court Circular Number 1 of 2017, but this Supreme Court Circular (SEMA) is not known or included in the hierarchy of legislation and is only a guide for Judges whose nature is internal to the Supreme Court Institution.

On the other hand, the judge referred to jurisprudence stating that the provisions of article 112 paragraph (1) of Law Number 35 of 2009 are provisions of rubber articles. The actions of users or addicts who control or possess Narcotics for the purpose of consumption or use alone will not be separated from the bondage of the

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article. Narcotics users before using must first buy, control, possess, store, carry the Narcotics so that article 112 of Law Number 35 of 2009 must not always be applied but must also be considered what is the intention or purpose of the Defendant to possess or control the Narcotics. If you look at it from this side, it can be justified for the Judge to apply the crime below the limit of the *special minimum* criminal provisions considering that article 112 paragraph (1) is a rubber article or contains *multiple interpretations*, so the Judge makes the Supreme Court Circular Number 3 of 2015 and Number 1 of 2017 as a reference in applying criminal sanctions.

The judge in this case had his own considerations in which he included the opinion of Gustav Radbruch who said that there are 3 (three) objectives of the law, namely certainty, justice and expediency, justice must occupy the first and foremost position rather than certainty and expediency. The application of penalties below the *special minimum* by the Judge is also based on the principle of freedom of the Judge. The discretion or freedom exercised by the Judge in terms of setting aside the *special minimum* crime stipulated in the Law is one of the ways the Judge exercises his authority in resolving a case.

Indeed, in principle, what has been regulated in the Law has the purpose and purpose that has been thought of by the framer of the Law, but when the Law is felt to be unable to provide justice and will cause a sense of injustice in society, then with full independence and freedom the Judge must dare to take a stand to deviate from it.

The freedom possessed by a judge in terms of the process of examining and adjudicating has been regulated in Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which reads:

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*"Judicial Power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the State Law of the Republic of Indonesia".<sup>10</sup>*

Then it is affirmed in Article 3 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which reads:

*"Any interference in judicial affairs by other parties outside the judicial power is prohibited, except in matters as referred to in the Constitution of the Republic of Indonesia Year 1945".<sup>11</sup>*

The freedom of a Judge in implementing this freedom and independence, the Judge of course bases on the applicable rules, although in determining the conclusion of a case the Judge is given the widest freedom, but the freedom possessed is not without limits. The limits given are not only determined by law but limits on the sense and value of justice from a judge arising from the process passed in examining cases and finally finding existing facts. The belief that there is justice is freedom and freedom in thinking and determining the opinion of the Judge in making a decision because in fact the conscience of a Judge will know the good and the bad.

Based on the theory of punishment, the purpose of the theory of punishment is to want the perpetrator or person who committed the crime, especially minor crimes, to be better (improvement). Meanwhile, certain crimes that are considered detrimental to social life and public order and considered irreparable cannot be prevented or retaliated against through punishment. The application of crime below the specific minimum threat limit of the provisions of Law Number 35 of 2009 concerning Narcotics by the Judge, if connected with the theory of punishment in this

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<sup>10</sup> Law Number 48 of 2009 concerning the Second Amendment to Law Number 35 of 1999 concerning the Principal Power of the Judiciary, Article 1 paragraph (1)

<sup>11</sup> *Ibid*, Article 3 Paragraph (2)

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case the combined theory, the Judge's decision in addition to making corrections or coaching criminal offenders, also restores balance and brings a sense of justice to the community. The existence of criminal application below the special *minimum* limit by the Judge by considering the sense of justice, this is based on the theory of *deterrence*.<sup>12</sup>

Judges basically in applying criminal sanctions also refer to the theory of punishment because in theory punishment is not only as retribution, but also as a tool to improve the actions of the perpetrator to be good and acceptable back in society. Therefore, the judge applies punishment below the special minimum with the aim of correcting abusers and preventing drug abuse. This is actually in accordance with the purpose of Law Number 35 of 2009 concerning Narcotics where its presence not only plays a role in providing a deterrent effect for drug abusers involved in the illicit circulation of narcotics with special *minimum* and *maximum* criminal provisions but also as an improvement and prevention of abusers for themselves. The defendant has family dependents. Based on the aggravating and mitigating matters stated by the Judge in his non-juridical considerations, according to the Author, the aggravating matter refers more to the consequences of the Defendant's actions which are considered not to support the Government's program in efforts to eradicate drug abuse because according to the Government, this drug abuse will have a negative impact on individuals or society, especially the younger generation. While in mitigating matters, the Judge refers more to the condition of the Defendant, in which case he has family dependents.

Based on the descriptions of the Judge's consideration analysis which includes juridical and non-juridical considerations above, the Judge's consideration applies

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<sup>12</sup> Dahlan, *Justice Problems in Criminal Application to Drug Abusers*, Deepublish, Sleman, 2017, p.249

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criminal sanctions to Defendant Yamsul Arifin in the form of imprisonment of 1 (one) year 6 (six) months and a fine of Rp.800,000,000, (eight hundred million rupiah) provided that if the fine is not paid it is replaced with imprisonment for 2 (two) months, this is because the Judge refers to the legal facts revealed in the trial that the purpose and purpose of the Defendant in possessing or controlling the narcotics for his own use, and the Judge in applying criminal sanctions to the Defendant deviates from the limit of the special minimum criminal provisions in Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics, taking into account Jurisprudence, Supreme Court Circular (SEMA) Number 3 of 2015, and Supreme Court Circular (SEMA) Number 1 of 2017 concerning the Implementation of the Formulation of the Results of the Supreme Court Plenary Meeting as a Guideline for the Implementation of Duties for the Court.

### **B. Analysis of the judge's consideration in applying criminal sanctions against drug abusers in decision number 295/Pid.Sus/2021/PN.Blt An.Elysa Sadola.**

Based on these considerations, the author agrees with the Judge, it is of course because based on the facts revealed at the trial that there was actually another purpose for the defendant to buy the methamphetamine and not only for his own consumption, as a result in this case the Defendant is categorized as an abuser involved in the illicit circulation of narcotics in accordance with the intent of Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which is intended for Abusers who are involved in drug trafficking and not as abusers themselves.

So that if it is related to the theory of legal certainty, it is appropriate for the Judge to apply criminal sanctions between *the minimum* and *maximum* limits specifically in accordance with the criminal provisions in article 112 paragraph (1) of Law Number 35 concerning Narcotics, namely imprisonment for a minimum of 4 (four)

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years and a maximum of 12 (twelve) years, and a fine of at least Rp.800,000,000.00 (eight hundred million rupiah) and a maximum fine of Rp.8,000,000,000, 00 (eight billion rupiah). The penalties received by the Defendant are imprisonment for 4 (four) years and 3 (three) months and a fine of Rp. 800,000,000.00 (eight hundred million rupiah) provided that if the fine is not paid it is replaced by imprisonment for 1 (one) month.

This is of course applied by the Judge based on the legal facts revealed at the trial in which the Defendant not only used narcotics for himself but also intended for other purposes. So that Defendant Elysa Sadola cannot be classified as an abuser for herself, in contrast to Defendant Yamsul Arifin in the decision 203/Pid.Sus/2021/Pn.Blt where legal facts reveal that she is proven to be a self-abuser which should be applied to the criminal provisions in article 127 letter (a) of Law Number 35 of 2009 concerning Narcotics. Based on the theory of punishment, the purpose of the theory of punishment is to want improvement in humans or people who commit crimes, especially minor offenses. As for certain criminal acts that are considered detrimental to the order of public life, and the perpetrators of these crimes are considered irreparable, the nature of imprisonment or retribution from a crime cannot be avoided.

The application of crime between *the minimum* and *maximum* limits of this particular crime certainly has its own purpose, and if it is connected with the combined theory, the application of crime based on *the minimum* and *maximum* limits is more focused on efforts to provide a deterrent effect and self-improvement of the accused. Because the judge basically in applying the crime also refers to the purpose of punishment. The purpose of punishment is not only as retaliation, but also as a tool to improve the Defendant's actions to be good and acceptable in society again,

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especially in this case the Defendant is categorized as an abuser involved in the illicit circulation of narcotics. This is actually in accordance with the purpose of Law Number 35 of 2009 concerning Narcotics where its presence plays a role in providing a deterrent effect for drug abusers involved in the illicit circulation of narcotics, as well as self-improvement of the Defendant so as not to repeat his actions again and prevention aimed at the community due to the *minimum* and *maximum* criminal threats Especially for the old people are afraid to commit the same act and are afraid to be involved in the criminal act of illicit drug trafficking.

Based on the descriptions of the Judge's consideration analysis which includes juridical and non-juridical considerations above, the Judge's consideration applies criminal sanctions to the Defendant Elysa Sadola in the form of imprisonment of 4 (four) years 3 (three) months and a fine of Rp.800,000,000, (eight hundred million rupiah) provided that if the fine is not paid it is replaced with imprisonment for 1 (one) month, this is because the Judge refers to the legal facts revealed in the trial that the purpose and purpose of the Defendant in possession or possession of narcotics other than for his own use, the Defendant is also involved in the illicit circulation of narcotics. So that the Judge in applying criminal sanctions against the Defendant remains within the limits of the *minimum* and *maximum criminal provisions* specifically in Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

### **3.2. Factors that result in differences in the application of criminal sanctions for drug abusers in Decision Number 203/Pid.Sus/2021/PN. Blt**

The legal facts revealed at the trial in decision number 295/Pid.Sus/2021/Pn.Blt on behalf of the defendant Elysa Sadola in which the elements in article 112 paragraph (1) have been fulfilled, and although he has

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presented a defense that he possesses and controls class I narcotics not plants for his own use, the facts at trial show that he has other purposes so that he is classified as an abuser in narcotics trafficking. Therefore, the application of criminal sanctions against Defendant Elysa Sadola falls between the *minimum* and *maximum limits* specifically for criminal provisions in the article.

The Supreme Court in Supreme Court Circular (SEMA) Number 3 of 2015 and Supreme Court Circular (SEMA) Number 1 of 2017 has provided a formulation of criminal chambers related to article 112 which is allowed for Judges to deviate in their criminal provisions. However, according to the author of the Supreme Court Circular (SEMA), it is not enough to be a basis for judges to apply criminal sanctions that deviate from the criminal provisions in Law Number 35 of 2009 concerning Narcotics, considering that the Supreme Court Circular (SEMA) does not have a position in the hierarchy of laws and regulations so that it only applies within the Supreme Court Institution. Of course, it will also increase the problem of legal certainty in law enforcement because it is contrary to the principle of legality.

So it is good that to ensure legal certainty, especially for drug abusers, Law Number 35 of 2009 concerning Narcotics should be reviewed so that there are no more articles containing multiple interpretations in order to ensure legal certainty among convicts and also in the eyes of the public who assess it. The author argues that according to legal provisions the application of different criminal sanctions or criminal disparities is a common thing that can occur in a judgment, because a Judge when deciding a criminal case has the principle of freedom of the Judge who cannot be influenced by other parties and occurs because there are differences in legal facts in each case revealed at trial. So that judges in carrying out their duties will always be faced with the choice of prioritizing justice or legal certainty.

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This rule of application may or may not be determined, but it is better determined because in punishing someone there must be a clear arrangement. If this rule of application is not specified, the Judge may analogize the application of a special minimum penalty such as the application of a specific maximum regarding when it can be aggravated or commuted. Looking at the current situation, special minimum criminal application rules are needed so as not to cause problems in their application so as to create certainty, justice, and expediency in each judge's decision and minimize the application of different criminal sanctions or disparities that are too striking.

### 4. Conclusion

The conclusions in this study are as follows:

1. The judge's consideration in applying different criminal sanctions to drug abusers in decisions number 203/Pid.Sus/2021/Pn.Blt and number 295/Pid.Sus/2021/Pn.Blt is in the judge's consideration in decision number 203/Pid.Sus/2021/Pn.Blt The judge based on the legal facts revealed at the trial that the defendant Yamsul Arifin was an abuser for himself so that the judge in applying criminal sanctions deviated from the minimum criminal provisions specifically in article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics with due regard to jurisprudence, Supreme Court Circular Number 3 of 2015 and Number 1 of 2017. Meanwhile, in the judge's consideration in decision number 295/Pid.sus/2021/Pn.Blt based on legal facts at trial, the defendant Elysa Sadola is a dealer so that the judge still applies the crime between the *minimum* and *maximum* limits specifically in article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

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The judge's considerations are the basis for applying different criminal sanctions to abusers in both rulings.

2. As for the factors that resulted in the application of different criminal sanctions against drug abusers in decisions number 203/Pid.Sus/2021/Pn.Blt and number 295/Pid.Sus/2021/Pn.Blt, namely based on differences in legal facts revealed at trial, there are multiple interpretations in article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, discretion or freedom of Judges, and the absence of sentencing guidelines.

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