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Disparity of Sentence Decisions against Criminal Offenders without the Right to Carry Sharp Weapons from the Perspective of the Purpose of Punishment

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ABSTRACT: The aim of this research is twofold, namely, to analyze how criminal decisions against perpetrators of criminal acts without the right to carry sharp weapons which contain disparities can achieve the theory of punishment, then explain how the theory of proof of the occurrence of criminal decisions against perpetrators of criminal acts without the right to carry sharp weapons which states that they occurred disparity. This research method is empirical juridical, and in this research three approaches are used, namely, the empirical juridical approach and can be called a legal sociological approach in providing justice to criminal offenders in this research, especially the decisions that will be studied, then the case approach), conceptual approach. As in the case approach used are three decisions, namely the Supreme Court Decision Number 1146 K/Pid.Sus/2015; Supreme Court Decision Number 1070 K/Pid.Sus/2016; Supreme Court Decision Number 566 K/Pid.Sus/2017. Meanwhile, the conceptual approach used is disparity and the objectives of criminal law, and evidence. The results of the research in this research are that the three decisions of the panel of judges prioritize the neo-classical school because why in the neo-classical school in its main principle it says not only to protect the interests of society, but also to protect the interests of individuals, then there is a theory of evidence in analyzing the three the decision.

KEYWORDS: disparity, criminal, court decisions, sentencing theories, the purpose of punishment

I. INTRODUCTION

The term criminal is defined as criminal sanctions, but it is also interpreted with other terms such as punishment, punishment, criminalisation, imposition of punishment, giving punishment and criminal punishment.[1] However, the term "criminal sanction" is difficult to understand if the term is interpreted as "punishment" because it means "criminal punishment", and it is also more complicated if the term criminal is interpreted to mean "punishment-punishment".[2] Sudarto said that sanctions in criminal can be categorised into criminal sanctions and action sanctions. Criminal sanctions stem from the basis of why punishment is held. Meanwhile, the action sanction stems from the basic idea of what the punishment is for.[3] Sudarto adds and states that criminal sanctions will fail and will only bring anxiety. In this case, if too much use of criminal threats can result in the devaluation of the criminal law itself.[4]

In addition to Sudarto, Packer asserts that the conditions for the optimal use of criminal sanctions must include the following: the prohibited act is viewed by most members of society as conspicuously harmful to society and not justified by anything that society considers important, the application of criminal sanctions against the act is consistent with the objectives of punishment, the aggravation of the act will not hinder or hinder the desired behaviour of society, regulation through the criminal law process will not give the impression of aggravating both qualitatively and quantitatively, there are no reasonable options instead of criminal sanctions to deal with the behaviour concerned.[5] However, it is different from what Jeremy Bentham said, stating that criminal sanctions should not be used if they are groundless, needless, unprofitable, and ineffective.[6]

[1] Mahrus Ali, 2011, *Dasar-dasar Hukum Pidana*, Sinar Grafika, Jakarta, h. 185.

[2] Suhariyono AR, *Penentuan Sanksi Pidana Dalam Suatu Undang-Undang*, Jurnal Legislasi Indonesia, Vol., 6 No., 4, 2009, h, 617

[3] Sudarto, *Hukum Pidana Jilid 1A, Badan penyediaan Bahan-Bahan Kuliah FH Undip, Semarang,* 1973, hal., 7.

[4] H. Setiyono, *Kejahatan Korporasi Analisis Viktimologi Dan Pertanggungjawaban Korporasi Dalam Hukum Pidana*, Banymedia Publishing, Malang, Cetakan pertama, Edisi kedua, 2003, h.,117.

[5] *Ibid.*, h.117.

[6] *Ibid.*, h.117.

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Related to what has been explained above, the views of several experts on criminal sanctions, it is clear that the regulation of criminal sanctions is regulated in Article 10 of the Criminal Code which includes, main punishment and additional punishment. Principal punishment is in the form of death penalty, imprisonment, confinement, fine, and confinement, while additional punishment is in the form of revocation of certain rights, deprivation of certain goods and announcement of judge's decision.[7]

A criminal offence is an act that is prohibited in the provisions of criminal law or given a criminal witness by the rule of law, in other words, a criminal offence is an unlawful act that causes the perpetrator to be punished. In the principle of no punishment without guilt in criminal law becomes one of the elements of criminal responsibility of a criminal law subject. So it can be said that a person can be convicted if he commits an act prohibited by law with fault. In a mistake and responsibility for criminal offences, there must still be turmoil in law enforcement as an example in determining the witness given by the panel of judges in determining the criminal witness given, the term criminal disparity appears, which in the term of the large Indonesian dictionary is defined as a difference in distance. In addition, in the opinion of Molly Cheang as quoted by Muladi, disparity is the application of unequal punishment for the same offence in court practice. This raises questions for ordinary people because the justice that is felt in every society cannot be realised because it can be questioned whether the judicial practice does not yet have a sense of justice, therefore in this study the author wants to criticise the practice of criminal justice, especially in the disparity of sentencing decisions in deciding the perpetrators of crimes without the right to carry sharp weapons which are still widely found in court decisions.court decisions there are still disparities in sentencing decisions that are not inconsistent in imposing criminal sanctions using one of them in criminal justice practice in the application of Article 2 paragraph (1) of the Emergency Law of the Republic of Indonesia Number 12 of 1951 concerning Amending the "Ordonnantie Tijdelijke Bijzondere Strafbepaligen" (STBL 1948 NO. 17).17) regarding the offence of unlawful possession of firearms, ammunition or an explosive, striking weapons, stabbing weapons, or stabbing weapons. Which in the elements are divided into two parts Subjective Elements and Objective Elements as follows:

The subjective element consists of the elements of “Whoever” and the element of “Without Right” which the author will describe one by one below:

1. The element of "Whoever"; what is meant by this element is that in every formulation of the articles of the Criminal Code and criminal offences, the element of "Whoever" is an important word in looking at guilt and criminal responsibility. As a word "Whoever", it requires a serious study in the principle of guilt and criminal responsibility in the effort of proof. For example, in Article 362 of the Criminal Code on the offence of theft, there are words "whoever...". Meanwhile, criminal offences outside the Criminal Code are known as "every person...". Both "whoever" and "every person" have the same connotation in terms of guilt and responsibility. This means that it directly points to an individual person in a biological connotation. Or in other words, human responsibility as a person (naturalijke persoon). However, in the effort of proof, the element of "whoever/everyone" does not necessarily directly point to the individual (naturalijke persoon). When reviewing the Indonesian Criminal Code (KUHP) which is considered as a subject of criminal law is only a natural person in a natural biological connotation (naturlijke persoon). In addition, the KUHP also still adheres to the principle of "sociates delinquere non potest" where legal entities or corporations are considered unable to commit criminal offences;
2. The element of “Without Right” In relation to this, the formulation of the words without right in this offense, implies an understanding that the actions / deeds of the perpetrator / defendant are unlawful, although in this offense the element of “unlawful” is not formulated (in this case it is against material military law). However, from the words “Without right” in the formulation of this offense, it is certain that the actions of a person (whether military or non-military) as far as firearms, munitions or explosives are concerned, must be authorized by an authorized official. What is meant by “without right” means that there is no power, authority, ownership, possession of something (in this case weapons, munitions or explosives). Thus, the power, authority, ownership, possession only exists in a person (the perpetrator/defendant) after there is a permit (in accordance with the law that allows it).

In addition, the objective element consists of “The element of entering Indonesia, making, receiving, attempting to obtain, delivering or attempting to deliver, possessing, carrying, having supplies on him or having in his possession, storing transporting, hiding using or removing from Indonesia” and “The element of a striking weapon, stabbing weapon, or stabbing weapon (slag, steek of stoot wapen)”. Which the author will also describe one by one below:

1. “The element of entering into Indonesia, making, receiving, attempting to obtain, delivering or attempting to deliver, mastering, carrying, having in stock with him or having in his possession, storing transporting, concealing using or removing from Indonesia”; The element of entering into Indonesia, making, receiving, attempting to obtain, delivering, or attempting to deliver, mastering, carrying, having in stock with him or having in his possession, storing, transporting, concealing, using or removing from Indonesia a striking weapon, stabbing weapon or stabbing weapon. The elements of entering into Indonesia, making, receiving, attempting to obtain, delivering, or attempting to deliver, possessing, carrying, having in stock,

[7] Suhariyono AR, *Perumusan Sanksi Pidana Dalam Pembentukan Peraturan Perundang-Undangan*, Jurnal Perspektif, Vol., XVII No., 1, 2012, h., 27

or having in his possession, storing, transporting, concealing, using or removing from Indonesia a bludgeoning weapon, stabbing weapon or stabbing weapon. What is meant by entering Indonesia is bringing in, bringing something (in this case firearms, munitions or explosives) from outside the region (from a foreign country) into the territory of the Republic of Indonesia;

2. Element "Any striking weapon, stabbing weapon or piercing weapon (slag, steek of stoot wapen)". In the definition of a striking weapon, stabbing weapon or stabbing weapon in this article, goods which are obviously. Intended to be used for agricultural purposes or for household chores or for the purpose of lawfully performing work or which obviously has the purpose of being an heirloom or ancient or miraculous item. From the provisions of the above article, we can see the exceptions provided by this law. Sharp weapons that are used for agriculture or for household chores or doing other work. If in a simple example, a farmer who carries a celurit to clean the grass in the rice field, cannot be subject to the criminal threat of carrying sharp weapons without rights, because in this case the sharp weapon is used for agriculture and the farmer's work.

From the legal rules that the author describes above, it is clear that carrying sharp weapons without the right to control can be subject to criminal threats, therefore if it is not for work or official duties, it is better not to carry sharp weapons. The reason for self-preservation when traveling cannot be accepted as a justification for carrying sharp weapons. Thus, everyone should be careful and be able to behave wisely so as not to be caught in the criminal threat of carrying sharp weapons without the right, even if the reason is just to be on guard.

The position of judges is very important in upholding law and justice. Because judges are the enforcers of law and justice, as well as the key to the success of law enforcement which is the main goal of community life in a state of law. Judges are the spearhead and guardians of the joints of the rule of law, a noble position because they are God's representatives in the world, and judges are also seen as symbols of justice as well as symbols of injustice. As Indonesia is a state of law, all actions and deeds must be subject to the provisions and laws and regulations without exception for any person or the principle of equality before the law for every citizen (equaly before the law) so that if something happens that is not in accordance with or violates the provisions of the legislation, the consequence is dealing with the law.

In addition, the freedom of judges in providing criminal witnesses in justice in the legal context is closely related to the meaning of legality. It is said to be fair if the rules made apply equally, equally and without legal discrimination applied to all cases that according to the regulations must be applied.[8] Hart argues that the general principle of justice in law is equality and inequality.[9] This means that similar things are treated in similar ways, while different things are treated in different ways. This view gives the perception that equality towards individuals must be treated the same as other individuals, it becomes relative if equality is different from what is done to the way it is treated, as well as the treatment of similar things in a similar way too.

Justice as a principle in law should not be ignored in practice, being a fair person is not easy and not difficult, as long as the individual has the soul to behave fairly. Because basically justice returns to the person who carries out the judicial process to the person being tried. This means that not everything that is equal is said to be fair, depending on the substantive principles of the actions taken. The reality that occurs in the social life of the community becomes incorrect if the rights exercised by the individual are said to be unfair, even though they are in accordance with the applicable provisions. In practice, many people still do not understand the meaning of justice itself, because as a substance of the law that is done fairly is not necessarily fair to others, and vice versa. Therefore, justice contains the concept of relativism both in terms of judgment, vision, feelings, and perception, to find the true meaning of justice. Justice cannot be seen as feelings, desires, and expectations, but resides in the conscience of each which cannot be expressed with certainty.

The theory of the purpose of punishment according to Wirjono Prodjodikoro is to scare people from committing crimes, both by scaring the public (general preventive) and scaring certain people who have committed crimes so that in the future they will not commit crimes again (speciale preventive) or to educate or correct people who commit crimes so that they become people of good character so that they are beneficial to society.[10] The existence of the theory of the purpose of punishment is expected to be a means of community protection, rehabilitation, and resocialization, fulfilling the views of customary law, as well as psychological aspects to eliminate guilt for those concerned.

The disparity in judges' considerations in the imposition of a court decision with the same type of criminal offense but different sentences makes the sense of justice disappear or disappear. As we know that there is one important principle or principle of a state of law, namely the principle of equality before the law. This means that in law enforcement all citizens have the same position. There is no term selective in its enforcement or even immune to the law. So that anyone who violates the law, be it the president or ordinary people, must be equalized in law enforcement. Therefore, the difference in sentencing by judges in a decision of the same

[8] Hans Kelsen, "*Teori Umum Hukum dan Negara: Dasar-dasar Ilmu Hukum Normatif sebagai Ilmu Hukum Deskripti-Empirik"*. Terjemahan Somardi, Jakarta: Bea Media Indonesia, 2007, h. 15-16.

[9] Yustinus Suhardi Ruman, *"Keadilan Hukum dan Penerapannya dalam Pengadilan", Humaniora,* Volume 3, Nomor 2, Oktober 2012, h. 348.

[10] Wirjono Prodjodikoro, *Tindak Tindak Pidana Tertentu Di Indonesia*, P.T Eresco, Jakarta,1980, h. 3.

type makes the principle of equality before the law dead. A criminal offense with the same type of punishment should also be the same to uphold a sense of justice for the convicted person.

In this study, the researcher's concern is the disparity in judges' decisions in court decisions with perpetrators of crimes without the right to carry sharp weapons. There are court decisions in Indonesia that decide cases of perpetrators of crimes without the right to carry sharp weapons that are different, so that there are gaps between judges' decisions that raise questions in the community, whether the case of criminal offenders without the right to carry sharp weapons is not important to become a legal study because of the disparity of punishment in the judge's decision. In accordance with the law on judicial power, a judge has the ability to implement the law independently, and is not bound by jurisprudence or decisions of previous judges in a similar case. The implementation of the sentence imposed by the judge must contain a sense of justice, usefulness and legal certainty in the midst of society so that it can provide the best decision for the perpetrators and victims of the crime. The position of judge is the core organ in the judicial process that is tasked with upholding law and justice. Judicial power exercised by the Supreme Court together with the judiciary under it, is the power to uphold law and justice through the authority to examine, hear and decide on criminal cases submitted to it.[11] Judges in deciding cases often experience criminal disparity. Criminal disparity does not only occur in Indonesia. Almost all countries in the world face this problem. Criminal disparity, which is referred to as the disturbingdisparity of sentencing, invites the attention of the legislature and other institutions involved in the criminal law implementation system to solve it.

Criminal disparity arises due to the imposition of different penalties for similar criminal offenses or comparable levels of danger. This punishment is of course the punishment imposed by the judge against the perpetrator of the crime, so it can be said that the figure of the judge in terms of the emergence of criminal disparity is very decisive. In the criminalization of perpetrators of crimes without the right to carry sharp weapons, the concept of disparity in decisions is not only seen from the imposition of verdicts on similar criminal acts or the subject matter is equivalent and the dangerous nature of an act can be compared, but also looks at factors related to the criminal act (perpetrators of crimes without the right to carry sharp weapons etc.).[12]

Regarding the legal rules of carrying sharp weapons without the right to control can be subject to criminal threats in question, the author will first describe the meaning of the operational definitions of various types, forms, and classifications of sharp weapons that can be criminalized. Sharp weapons are tools that are not only used to protect themselves from wild animals, but also to fight enemies. Weapons can also be a marker of a nation's cultural development, the way they use and use weapons also develops, especially in Indonesia, along with the times, the value of traditional sharp weapons has changed, such as the value of turtle beetles. The value has changed from a combat tool to a collectible. At any moment, a tool can become a tool to harm others. The physical influence of groups on humans, primitive and modern forms of social organization are among the factors of value transfer in human civilization.[13]

The definition of a bladed weapon can be seen in the definition of a tool used to injure, kill or destroy an object. Weapons can be used to attack or to defend oneself, as well as to threaten and protect. Anything that can be used to damage even psychologists and the human body can be said to be a weapon. Weapons can be as simple as a club or as complex as a ballistic missile.[14] A sharp weapon is a tool that is sharpened and used as a tool to injure the opponent's body. Edged weapons are described as objects or things that are used for self-defense or attacking others. Objects or tools that can be used as weapons but not for self-defense or attack have their own label and have a neutral power. For example, a knife or sword/cutting knife is a neutral name for a cutting tool. However, if it is used to attack another person then the knife or sword/machete will change its name to a bladed weapon.

Sharp weapons are not only used to protect themselves from wild animals, but also to fight enemies. Weapons can also be a marker of a nation's cultural development, the way they use and use weapons also develops, especially in Indonesia, along with the times, the value of traditional sharp weapons has changed, such as the value of turtle beetles. The value has changed from a tool to harm others. The physical influence of groups on humans, social and modern forms of organization is one of the factors of value transfer in human civilization.[15]

Another defense of a weapon is a tool used to injure, kill or destroy objects. Weapons can be used to attack, defend, and threaten and protect. Anything that can be used to destroy (even mental and human) is a weapon. It can be as simple as a stick or as complex as a ballistic missile. A sharp weapon is a pointed instrument that can be used directly to damage the body of an opponent.Law No. 2 of 2002 on the National Police of the Republic of Indonesia, the interpretation of Article 15 paragraph (2) letter e clarifies the meaning of sharp weapons. What is meant by “sharp weapons” in this law are stabbing weapons, stabbing weapons, and weapons,

[11] Adies Kadir, *Menyelamatkan Wakil Tuhan*, Jakarta, PT Semesta Merdeka Utama, 2018, hlm. 214.

[12] *www://harkristutiharkrisnowo.com/*disparitas, di kunjungi tanggal 2 Maret 2023 Pukul: 15.03.

[13] Atin sri Pujiastuti & Josias Runturambi, *Senjata Api Dan Penanganan Tindak Kriminal*, Pustaka Obor Indonesia, Jakarta, 2015, hlm 6.

[14] https://id.wikipedia.org/wiki/Senjata, Online: 09 April 2022, pukul 04.26 WIB

[15] Runturambi, Josias & Pujiastuti, Atinl Sri, *Senjatal Api danl Penanganan Tindak Kriminal*. Jakarta: Pustaka Oborl Indonesia, 2015, hlm.6.

and strikers, excluding items that are obviously used for agriculture, for household labor, for the purpose of doing legitimate or real work, for the purpose of heirlooms, ancient items, magic items as stipulated in Law Number 12/Drt/1951.

The prohibition of the use of sharp weapons has become a classic issue due to the possible dangers posed by sharp weapons, these dangers will encourage a person's intention or desire to commit other crimes, such as violent crimes against others, so the use of sharp weapons is prohibited to be a long-term problem. There are many crimes that use bladed weapons in the form of violence. Therefore, what is meant by striking weapons, stabbing weapons and stabbing weapons needs to be explained one by one, that is:

1. Striking weapons from the term, it can be understood that striking weapons are weapons that are used by striking. This includes weapons in the form of two iron items or two hardwood sticks connected by a chain, such as those used in the white screen by actor Bruce Lee.
2. Stabbing weapons Stabbing weapons (steek wapen) are short, pointed weapons used in close-quarters fighting. This includes daggers.
3. Stabbing weapons Stabbing weapons (stoot wapen) are weapons used over relatively longer distances. These include samurai, spears and arrows.

Based on the explanation above and in connection with the Emergency Law of the Republic of Indonesia Number 12 of 1951 concerning Amending the "Ordonnantie Tijdelijke Bijzondere Strafbepaligen" (STBL 1948 NO.17) concerning the offense of possession without rights of firearms, ammunition or an explosive, striking weapons, stabbing weapons, or stabbing weapons. The potential crime that may arise from the possession or carrying of sharp weapons outside the home is very large. Although the sharp weapon is carried only as a precautionary measure or hidden or not visible, the action can still pose a threat of criminal acts against others so that it is categorized as a criminal offense.

Before going further, the focus of this research is that the author wants to criticize the practice of criminal justice, especially in the disparity of sentencing decisions which are still widely found in court decisions. So before that, the author will first explain what is meant by disparity, disparity according to Molly Cheang as quoted by Muladi, disparity is the application of unequal punishment for the same offense in practice in court.[16] Further emphasized by Harkristuti Harkrisnowo, criminal disparity can occur in several categories, namely: First, disparity between the same criminal offense; Second, disparity between criminal offenses that have the same level of seriousness; Third, disparity of punishment imposed by one panel of judges; Then the fourth, disparity between punishments imposed by different panels of judges for the same criminal offense.

Punishment disparity is one of the important topics in criminal law. Sentencing disparity means that there is a difference in the amount of punishment imposed by the court in cases that have the same characteristics. Disparity (disparity: dis-parity) is basically the negation of the concept of parity, which means equality in amount or value. In the context of sentencing parity means equality of punishment between similar crimes in similar circumstances.[17]

As explained above, disparity is the inequality of punishment between similar offenses in comparable circumstances.[18] The concept of parity itself cannot be separated from the principle of proportionality, the principle of punishment promoted by Beccaria where it is expected that the punishment imposed on criminals is proportional to the crime committed.[19] If the concepts of parity and proportionality are seen as one, then disparity in punishment can also occur in the event that the same punishment is imposed on perpetrators who commit crimes of different levels.

The existence of differences in sentencing or disparity in punishment is basically a natural thing, because it can be said, almost no cases are really the same. Sentencing disparity becomes a problem when the range of differences in sentences imposed between similar cases is so large that it creates injustice and can raise suspicions in the community. Therefore, the discourse on disparity of punishment in criminal law and criminology has never been intended to eliminate differences in the amount of punishment for criminals, but to minimize the range of differences in sentencing.

The factors for the disparity of judges' decisions in court are: Legal Factors where in Indonesian criminal law, Judges have very broad freedom to choose the type of punishment (straafsoort) they want, in connection with the use of an alternative system in criminal threats in the law, from several articles in the Criminal Code it appears that several main punishments are often threatened to the perpetrators of the same crime alternatively, meaning that only one of the main punishments threatened can be imposed by the judge and this is left to him to choose the severity of the punishment (strafmaat) to be imposed, because what is determined by legislation is only the maximum and minimum. Judges' factors include internal and external characteristics. Internal and external characteristics are difficult to separate, because they have been integrated as an attribute of a person called a human equation or personality.

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[16] Wahyu Nugroho, '*Disparitas Hukuman dalam Perkara Pidana Pencurian Dengan Pemberatan'* (2012 5 (3) Jurnal Yudisial hlm. 262-263.

[17] Allan Manson, *The Law of Sentencing*, *Irwin Law*: 2001 hal. 92-93.

[18] Litbang Mahkamah Agung, Kedudukan dan Relevansi Yurisprudensi untuk Mengurangi Disparitas Putusan Pengadilan, Puslitbang Hukum dan Peradilan Mahkamah Agung RI: 2010 hal. 6.

[19] Allan Manson, *op.cit* hal. 82.

In addition to the factors mentioned above, the elucidation of Article 54 states that this provision establishes sentencing guidelines that are very helpful for judges in considering the measure or severity of the punishment to be imposed. By considering the matters detailed in the guidelines, it is hoped that the punishment imposed will be proportional and can be understood by both the community and the convict. The details in this provision are not limitative, meaning that the judge can add other considerations in addition to those listed in paragraph (1).

The provision in paragraph (2) of Article 54 of the Criminal Code is known as the principle of rechterlijke pardon which authorizes the judge to pardon a person who is guilty of committing a minor crime. This pardon is included in the judge's decision and it must still be stated that the defendant is proven to have committed the criminal offense charged against him.

Based on Article 54, it is clear that if there is forgiveness, the judge in his/her decision only needs to declare the defendant guilty, but not followed by punishment. The defendant must truly regret his actions, the defendant committed the act in question in situations and conditions that could not be avoided the impact caused by the criminal act was not great.

It is clear that the purpose of law enforcement is not only to realize legal certainty but also useful justice. Article 53 of the Criminal Code emphasizes that if in upholding law and justice there is a conflict between legal certainty and justice, justice must be prioritized.

Based on the above statement, which is a criminal sanction and the provisions in Article 54 of the New Criminal Code, especially the application of the principle of rechterlijke pardon, does not work inconsistently because in judicial practice there is a disparity in the decision making of the panel of judges in deciding a criminal offense and declaring the defendant guilty or sentencing the defendant, then as the focus of this research the author summarizes the examples of several court decisions obtaining permanent legal force (inkracht van gewijsde) the author finds that there are disparities in criminal sanctions as the focus of the research the author describes in **Table 1** as follows:

Table 1: Decisions of the Supreme Court Against Perpetrators of Criminal Acts Without the Right to Carry Sharp Weapons.

No	Decision No.	Verdict
1.	Supreme Court Decision Number 1146 K/Pid.Sus/2015	Therefore, the Defendant shall be sentenced to six months imprisonment;
2.	Supreme Court Decision Number 1070 K/Pid.Sus/2016	Therefore, the Defendant shall be sentenced to one year imprisonment;
3.	Supreme Court Decision Number 566 K/Pid.Sus/2017	Therefore, the Defendant was sentenced to five months imprisonment;

Secondary data sources; Directory of Supreme Court Decisions in 2023.

Based on the data on criminal justice practice, especially on the decisions made by the panel of judges in the table above, it is clear that there are disparities in the sentencing of judges in the imposition of court decisions. Disparity in decisions relates to differences in sentencing for similar or equally serious cases without clear reasons or justification. Because based on the decisions above, there is no inconsistency in each panel of judges in deciding the perpetrators of crimes without the right to carry sharp weapons, the author by using the achievements of the legal theory of punishment is appropriate for the panel of judges in deciding each of these decisions. By using a legal sociological approach, namely an approach that studies the law in reality in the form of attitudes, behavioral assessments, which provide the problem under study (legislation) as secondary data, but from real behavior as primary data obtained in the decision under study. Therefore, the author wants to examine the issue of the problem in the formulation of the problem, namely how the decision to punish the perpetrator of a criminal offense without the right to carry a sharp weapon containing disparity can achieve the legal theory of punishment? The purpose of this study is to analyze the sentencing decision against the perpetrator of a crime without the right to carry a sharp weapon containing disparities that can achieve the legal theory of punishment.

II. RESEARCH METHODS

Related to the type of research to be carried out by the author in this is Normative Juridical legal research as stated:
According to Soerjono Soekanto and Sri Mamuji, normative legal research includes an inventory of legal principles, legal systematics, research on law enforcement both operationally by institutions and in terms of legal settlement processes in practice, then research on the level of vertical and horizontal synchronization, comparative law and legal history.[20]

In addition, normative legal research is also called doctrinal research. In this type of legal research, often the law is conceptualized as what is written in the legislation as what is written in the legislation (law in books) or law is conceptualized as

[20] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (*Suatu Tinjauan Singkat*), Rajawali Pers, Jakarta, 2010, h. 14.

rules or norms that are a benchmark for human behavior that is considered appropriate, therefore, as a source of data is only secondary data, consisting of primary legal materials and secondary legal materials.[21] Thus, this study aims to determine the consideration of judges in deciding cases of carrying sharp weapons without a license in Supreme Court Decision Number 1146 K/Pid.Sus/2015; Supreme Court Decision Number 1070 K/Pid.Sus/2016; Supreme Court Decision Number 566 K/Pid.Sus/2017; is in accordance with the description of the achievement of the legal objectives of punishment?

In connection with the type of research used is juridical legal research, in this study the authors use three approaches, namely: Conceptual approach, case approach, and socilogical approach, which is usually called an empirical juridical approach, which has its own argumentation as follows:

Pertama, pendekatan peraturan perundang-undangan (statute approach), terkait dengan hal ini, menurut, Johnny Ibrahim Normative research must use a statutory approach, because what will be studied are various rules of law that become the focus and central theme of a study. The statutory approach is used by the author to examine and analyze Article 2 paragraph (1) of the Emergency Law of the Republic of Indonesia Number 12 of 1951 concerning Amending "Ordonnantie Tijdelijke Bijzondere Strafbepaligen" (STBL 1948 NO.17) as applied in Supreme Court Decision Number 1146 K/Pid.Sus/2015; Supreme Court Decision Number 1070 K/Pid.Sus/2016; Supreme Court Decision Number 566 K/Pid.Sus/2017.

Second, the case approach, the case approach is carried out by examining cases related to legal issues that are used as topics of discussion in a writing. In relation to the case approach, what the author focuses on is Supreme Court Decision Number 1146 K/Pid.Sus/2015; Supreme Court Decision Number 1070 K/Pid.Sus/2016; Supreme Court Decision Number 566 K/Pid.Sus/2017.

Third, a socilogical approach in which this approach studies the law in reality in the form of attitudes, assessments, behaviors, which are related to legal issues in this study where there is disparity in the decision to scan.

III. RESEARCH RESULTS AND DISCUSSION

A. Sentencing Verdicts Against Perpetrators of Criminal Acts Without the Right to Carry Sharp Weapons Containing Disparities Can Achieve the Objectives of Criminal Law

1. Analysis in terms of Criminal Law

In the consideration of the panel of judges applying criminal sanctions for criminal acts without the right to carry sharp weapons, the panel of judges will first consider several things such as the facts in the individualized criminal trial, the circumstances and family background of the defendant and other matters that exist in the defendant.

From the three cases that are the focus of the author, namely in Supreme Court Decision Number 1146 K / Pen.Sus / 2015; Supreme Court Decision Number 1070 K / Pen.Sus / 2016; Supreme Court Decision Number 566 K / Pen.Sus / 2017, containing disparities in the verdicts in the three decisions, when viewed from the review of the legal objectives of punishment, we must first know that the legal objectives of punishment are theoretically influenced by three schools, namely:

First, the classic flow. In this classical flow, the purpose of criminal law is: "to protect the interests of private individuals from the power of the ruler (state). According to Sudarto, the classical flow of criminal law is retributive and repressive towards criminal offenses. This school believes in indeterminism regarding the freedom of human will which emphasizes the actions of the perpetrator of the crime so that the criminal law wants the act and not the perpetrator (daad strafrecht). In the punishment system, the classical school only adheres to a single track system, namely a single sanction system in the form of criminal sanctions. The classical school in criminal law rests on three pillars, namely:

a. The principle of legality, which states that there is no punishment without a law, no act without a law and no prosecution without a law.
b. The principle of guilt which contains that a person can only be convicted for a criminal offense that he committed intentionally or by mistake.
c. The principle of secondary retaliation, which states that concrete punishment is not imposed with the intention of achieving a beneficial result, but in proportion to the severity of the offense committed.

Based on the explanation above, in accordance with the principles in the purpose of criminal law, the classical school of criminal law views that criminal law is aimed solely at a person's actions without considering whether the person who commits the act is forced or not. So with this principle of thought, the classical school of criminal law objectives are based on the actions that have been committed by the perpetrator (defendant). In addition, the main principle of this teaching is that criminal law is made to protect the interests of individual individuals.

Second, the modern flow. This flow emerged in the 19th century, where the center of attention is the perpetrator. However, in principle, in this modern flow, the purpose of criminal law is: "to protect society from crime or eradicate crime". This goal holds to the postulate of le salut du people est la supreme loi which means the highest law is the protection of society. This school is often called the positive school because it seeks the cause of crime positively as far as it can be corrected. Therefore,

[21] Amiruddin dan H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Ed. 1-6, Jakarta: Rajawali Pers, 2012, h. 118.

this modern school requires criminal law that is oriented towards the perpetrator of dader-strafrecht. The modern school in criminal law rests on three pillars.

a. Fighting crime, Cesare Lambroso as the originator or pioneer of the modern school with Enrico Ferri conducted a systematic study of human behavior in order to overcome crime in society.
b. The second step is to pay attention to other sciences such as criminology, psychology and so on. In fact, the first systematic scientific investigation of crime was carried out by Adolphe Quetelet (1874), a Belgian national, mathematician, who as one of the results was criminal systematics.
c. In the third basis, Ultimum Remedium, it needs to be explained that this basis applies universally in almost all countries. Ultimum Remedium means that criminal law is used as the ultimate weapon or the last means used to solve a legal problem. several experts have put forward theories related to criminal law as Ultimum Remedium. Frank Von Lizt as one of the figures who continues the modern flow in criminal law argues that criminal law is the substance of other legal domains.

Based on the explanation above, in accordance with the principles in the purpose of criminal law, the modern school in criminal law is intended because humans are considered not to have freedom of will but are influenced by their character and environment, so they cannot be blamed or held accountable in criminal matters. In addition, the principle of this teaching is to protect the interests of society.

Third, the next development of the flow is the neo-classical flow. As in the principles of the two streams above, namely: The classical flow is oriented towards criminal acts while the modern flow is oriented towards the perpetrators of criminal acts, then in this neo-classical flow is oriented towards criminal acts and perpetrators of criminal acts, or what is known as daad-deder-strafrecht, which appears in this neo-classical flow starting from the doctrine of freedom of will as in the classical flow, but with the influence of the modern flow, the neo-classical flow recognizes the existence of mitigating factors in criminal responsibility. Based on the explanation above, in accordance with the principles of the classical school and the principles of the modern school, in the Neo-Classical school, it must be understood that the neo-classical school is a combination of the views of the classical and modern schools. Thus, the neo-classical school views and states explicitly that the concept of social justice based on law is unrealistic and even unfair. This means that the main principle or this school is not only to protect the interests of society, but also to protect the interests of individuals or individuals.

In the concept of the legal objectives of punishment, it appears that the Criminal Code has set the objectives of punishment, namely in Article 54, namely: Preventing criminal acts by enforcing legal norms for the protection of society; Socializing convicts by providing guidance so that they become good and useful people; Resolving conflicts arising from criminal acts, restoring balance by bringing a sense of peace in society; Releasing guilt in convicts; and Punishment is not intended to suffer and degrade human dignity. Related to the policy of determining a sanction is a way, method, and/or rational action that is directed at a predetermined goal. In other words, the first step in determining a type of sanction, is to determine the objectives to be achieved by the sanction itself.

Based on the theories of punishment (in many legal literature referred to as criminal law theory) is directly related to the notion of subjective criminal law. These theories seek and explain the basis of the State's right to impose and execute the punishment. Questions such as why, what is the basis and for what purpose the punishment is imposed and executed, or what is the reason that the State in carrying out the function of safeguarding and protecting legal interests by violating the legal interests and personal rights of people, are fundamental questions that are the subject of discussion in these theories of punishment. These fundamental questions arise due to the fact that the implementation of subjective criminal law results in the attack of the rights and legal interests of the human person, which are actually protected by the criminal law itself. For example, a criminal is sentenced to imprisonment or confinement and executed, meaning that his rights or freedom of movement are deprived, or sentenced to death and then executed, meaning deliberately killing him. Therefore, objective criminal law can be referred to as the law of special sanctions.

Related to what is explained above, it can be concluded that the purpose of this punishment is that punishment is essentially closely related to criminal acts and criminal responsibility. Meanwhile, the use of the term criminal is interpreted as criminal sanctions or often other terms are used, namely punishment, punishment, punishment, sentencing, giving punishment and criminal punishment. Two Lamintang, there are basically three main ideas about the objectives to be achieved by a criminalization, namely: 1) To improve the personality of the criminal himself; 2) To make people deterrent; 3) To make certain criminals unable to commit other crimes, namely criminals who in other ways can no longer be corrected.

Based on the definition of the objectives of punishment in the three schools that exist in the objectives of punishment above, if it is related to the three decisions that will be the focus of this research, seen from the judge's consideration of each decision, the panel of judges prioritizes the neo-classical school because why in the neo-classical school in its main principle says not only to protect the interests of society, but also to protect the interests of individuals or individuals. This means that in the three decisions it is said to be a disparity decision and the term appears because the panel of judges used the principle in the neo-

classical school and overrode the understanding in Article 54, namely: Preventing criminal acts by enforcing legal norms for the protection of society; Socializing convicts by providing guidance so that they become good and useful people; Resolving conflicts caused by criminal acts, restoring balance by bringing a sense of peace in society; Releasing guilt in convicts; and Punishment is not intended to suffer and degrade human dignity.

The purpose of criminal law is basically to protect all citizens. Based on the formulation of the problem in the first part of Chapter I, namely, whether the decision to punish the perpetrator of a criminal offense without the right to carry a sharp weapon containing disparities can achieve the legal objectives of punishment?

Related to this, the author first wants to describe several things in the judge's consideration by using the basic principles of operational definitions on juridical, philosophical and sociological considerations, which the author will then relate by assessing that the judge's consideration is in accordance with the depiction of the objectives of criminal law. As, which is the focus of the author, talking about the purpose of criminal law is inseparable from the schools in criminal law that have their own basic principles as follows: Classical School (protecting the interests of individual individuals), then Modern School (protecting the interests of society), while the Neo-Classical School (can protect the interests of individual individuals and can also protect the interests of society), as these three schools in the purpose of criminal law are often the focus for several judges in deciding various kinds of criminal cases in Indonesia.

When viewed in terms of the judge's consideration, the following author will describe one by one the contents of the consideration of the panel of judges in the decision to be reviewed in this study as follows:

a. Supreme Court Decision Number: 1146 K/Pid.Sus/2015

In the Supreme Court Decision Number 1146 K/Pid.Sus/2015, the considerations of the panel of judges are: That the reason for the Public Prosecutor's cassation cannot be justified because the Judex Facti did not misapply the law; That the Judex Facti has examined and decided the case a quo correctly and correctly and stated that the Defendant has been proven legally and convincingly to have committed the crime without the right to carry and control a stabbing weapon or stabbing weapon as charged by the Public Prosecutor; That the conviction of the Defendant has been considered by the Judex Facti by examining all the legal facts revealed in the trial committed by the Defendant and considering the reasons for the Defendant carrying the stabbing weapon or stabbing weapon a quo which is carried daily by the Defendant as a farmer and considering the relevance of carrying the stabbing weapon or stabbing weapon in casu with the demonstration / protest by the farmers that occurred in the case in casu, therefore the conviction of the Defendant by the Judex Facti must be declared appropriate and correct; That the aforementioned reasons regarding the assessment of the results of the evidence which is an appreciation of a fact, which cannot be considered in the examination at the cassation level, because the examination at the cassation level only concerns whether a rule of law has not been applied or whether the rule of law has not been applied properly, or whether the trial method has not been carried out according to the provisions of the law and whether the Court has exceeded its authority, as referred to in Article 253 of the Criminal Procedure Code (Law Number 8 of 1981).

With the consideration of the panel of judges above, then in this decision the verdict is: Stating that the Defendant Fathan Hadra alias ATA has been proven legally and convincingly guilty of committing the crime of carrying, controlling and storing stabbing or stabbing weapons, without the right or without permission from the authorities; Sentencing the Defendant to six months imprisonment; Determining that the period of detention served by the Defendant is deducted in full from the sentence imposed; Ordering that the Defendant remain in detention; Stating the evidence in the form of: A machete measuring fifty-five centimeters in length, two point eight centimeters in width, with a wooden handle and the inscription BAR ORIGINAL complete with a sheath; one slingshot/bow made of iron that has been wrapped/wrapped using insulation with a length of twenty-four centimeters, nine arrows/eye launchers made of iron and the tip has been sharpened and at the base is given a raffia rope; confiscated and destroyed; Charged the Defendant to pay court costs of two thousand rupiah; Reading the Decision of the Central Sulawesi High Court in Palu Number 51/PID. SUS/2014/PT.PALU, dated September 30, 2014 which reads in full as follows: Accepting the request for appeal from the Public Prosecutor; Affirming the Decision of the Parigi District Court dated July 02, 2014 Number 42/Pid.B/2014/PN.Prg which is being appealed; Determining that the period of detention served by the Defendant shall be deducted in full from the sentence imposed; Charging the Defendant to pay court costs at both levels of court, which for the appeal level shall be two thousand five hundred rupiahs.

b. Supreme Court Decision Number 1070 K/Pid.Sus/2016

Then in Supreme Court Decision Number 1070 K/Pid.Sus/2016 the consideration of the panel of judges in this decision is as follows: That the reason for the cassation of the Cassation Petitioner/Public Prosecutor cannot be justified, because the Judex Facti did not misapply the law in trying the Defendant, the Judex Facti has appropriately and correctly considered the articles of law that form the basis of the conviction and the legal basis of the decision as well as consideration of aggravating circumstances and mitigating circumstances in accordance with Article 197 paragraph (1) letter f of the Criminal Procedure Code; That the actions of the Defendant who at the time of his arrest by the Police officers carried a dagger that was not related to the work of the Defendant fulfilled the elements of Article 2 paragraph (1) of Emergency Law Number 12 of 1951;

That again this reason also cannot be justified, because regarding the severity of the punishment in this case is the authority of the Judex Facti which is not subject to cassation, except for imposing a punishment exceeding the maximum punishment or less than the minimum punishment, which is determined by statutory regulations or imposing a punishment with insufficient consideration and in this case in imposing the punishment the Judex Facti has given sufficient consideration of the aggravating and mitigating circumstances.

With the consideration of the panel of judges above, then in this decision the verdict is: Stating that the Defendant AKBAR TANJUNG bin (deceased) BAHARUDDIN was legally and convincingly proven guilty of committing the crime of "Without the right to control and carry stabbing and stabbing weapons" Imprisoning the Defendant AKBAR TANJUNG bin (deceased) BAHARUDDIN for one year; Determining that the time the Defendant is in detention is deducted in full from the sentence imposed; Determining that the Defendant remains in detention; Determining that the evidence in the form of: one blade of a sharp weapon, a badik knife with a serrated handle made of iron; Confiscated by the State to be destroyed; one black bag. Returned to the Defendant; Charged also to the Defendant to pay court costs in the amount of one thousand rupiah.

c. Supreme Court Decision Number 566 K/Pid.Sus/2017

Furthermore, in Supreme Court Decision Number 566 K/Pid.Sus/2017, the consideration of the panel of judges in this decision is as follows: The reason for the Public Prosecutor's appeal is justified because the judex facti of the Cibadak District Court has misapplied the law in trying the Defendant in the case a quo. The decision of the judex facti of the Cibadak District Court which stated that the Defendant Herman Ledom alias Edom bin Rahmat was not proven to have committed the crime charged in the single indictment of the Public Prosecutor and therefore acquitted the Defendant of the Public Prosecutor's charges, was based on incorrect legal considerations; The judex facti misapplied the law or applied the law improperly because they concluded that the elements of entering Indonesia, making, receiving, trying to obtain, delivering or trying to deliver, controlling, carrying, having supplies on him or having in his possession, storing transporting, hiding, using or removing from Indonesia a stabbing weapon or stabbing weapon were not fulfilled / proven from the actions of the Defendant based on the consideration that the machete is not a stabbing weapon or stabbing weapon, but a machete is a weapon for gardening; The consideration of the judex facti of the Cibadak District Court was clearly wrong because the judex facti misunderstood the existence of the machete as a tool of human life which is solely understood through the meaning formulated in one text, ignoring the meaning formulated in other texts, and ignoring the context of the use of the tool in the case a quo for what purpose. The tools of human life that function to facilitate human life activities are generally neutral, the predicate of the tool is good or bad and/or the tool is a tool to commit a crime or not, does not depend on the inherent nature of the tool itself, but lies in the purpose for which the tool is used by someone. A sarong is a means to perform prayers for a man so it is qualified as a good tool but if it is used to entangle someone's neck so that he dies, then the sarong is a tool to kill people. The existence of the machete as a weapon for gardening is true in the context that it is used by farmers to cut trees or encroach on weeds, but if the machete is used by a farmer or anyone else to cut someone's neck or to injure someone else, then the machete is a tool for committing a crime, Its function can be as a beheading or cutting tool if the sharp part is used instead of the pointed end, but if what is used is the pointed end of the machete to injure someone, then the machete is a stabbing tool or a stabbing tool, and if the blunt back of the machete is used to hurt someone, then the machete is a beating tool; In the case at hand, the machete in the possession of the Defendant was a tool used by the Defendant to threaten the victim with the aim of killing the victim so that it qualified as a tool to commit a crime. In the context of the threat made by the Defendant against the victim, the part of the machete that the Defendant faced towards the victim's face was the sharp part, so the machete functioned as a stabbing or piercing tool or as a decapitating or cutting tool; Based on these considerations, the elements of bringing into Indonesia, making, receiving, attempting to obtain, delivering or attempting to deliver, controlling, carrying, having supplies on him or having in his possession, storing transporting, hiding, using or removing from Indonesia a stabbing weapon or stabbing weapon, have been fulfilled in the actions of the Defendant; The reason for the Public Prosecutor's cassation request which considered that the judex facti of the Cibadak District Court had misapplied the law or applied the law improperly regarding the concept of a machete as a stabbing weapon or as a stabbing weapon and requested that the Panel of Judges of cassation who tried the case a quo declare the Defendant Herman alias Ledom alias Edom bin Rahmat to be legally and convincingly proven guilty of committing a crime without the right to carry a sharp weapon as regulated and punishable in the indictment of article 2 paragraph (1) of the Republic of Indonesia Emergency Law Number 12/Decree (1). Emergency Law of the Republic of Indonesia Number 12/Drt/1951 which is compiled in a single charge and therefore impose a penalty on the Defendant Herman alias Ledom alias Edom bin Rahmat in the form of imprisonment for one year and three months minus the time the Defendant is in temporary detention, can be justified because it is supported by juridically relevant legal facts with the actions of the Defendant which are in accordance with the elements of the crime charged by the Public Prosecutor, so that the Defendant must be declared legally and

convincingly proven guilty of committing a criminal offense and therefore the Defendant must be sentenced in accordance with his actions.

With the consideration of the panel of judges above, then in this decision the verdict is: Stating that the Defendant Herman Ledom alias Edom bin Rahmat was legally and convincingly proven guilty of committing the crime of Without the Right to Carry Sharp Weapons; Sentencing the Defendant therefore to imprisonment for five months; Determining that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed; Determining the evidence in the form of: - One sharp weapon, a short machete with a length of approximately fifteen to twenty centimeters, with a handle made of wood, with a sheath tied with a red cloth; Confiscated for destruction; Charged the Defendant to pay court costs at the cassation level in the amount of two thousand five hundred rupiah.

2. Analysis of the Theory of Punishment

In addition to being reviewed in the law of punishment above, the author will explain that in legal theory (strafrecht theorien) this is often referred to as the theory of punishment objectives which includes the following theories:

a. Teori Pembalasan Absolut/Mutlak

According to these experts, the legal basis of punishment is the mindset of retaliation (vergelging). Basically, the flow of retaliation is divided into subjective patterns, namely retaliation aimed at the actions of the perpetrator and objective patterns, namely retaliation aimed at what is done. Known figures are Immanuel Kant and Regel who think that punishment (punishment) is the result/consequence of committing a crime, committing a crime then the consequences must be punished. This theory aims to satisfy the parties, either the community itself or the party who is harmed or victimized, with the existence of this theory, then in the Supreme Court Decision Number 1146 K/Pid.Sus/2015. Sentenced the defendant to six months imprisonment. Furthermore, in Supreme Court Decision Number 1070 K/Pid.Sus/2016; Sentenced the Defendant Akbar Tanjung Bin (Alm) Baharuddin to imprisonment for one year. Then further in Supreme Court Decision Number 566 K/Pid.Sus/2017. Sentencing the Defendant therefore with imprisonment for five months against the sanctions given is in line with the theory of natural thoughts for retaliation (vergelging).

b. Teori Tujuan (de Relative Theorien)

According to this theory, punishment is not intended as retaliation, and therefore does not recognize that punishment itself is the purpose of punishment. The theory of purpose or de Relative Theorien in principle teaches that the imposition of punishment and its implementation are at least oriented towards efforts to prevent convicts (special prevention) from the possibility of repeating in the future, as well as preventing the wider community in general (general prevention) from the possibility of committing crimes such as crimes that have been committed by convicts and others, as with the principles in this theory when viewed through the lens of the three decisions to be reviewed that the criminal witnesses given to the Supreme Court Decision Number 1146 K/Pid.Sus/2015. Stating that the Defendant Fathan Hadra alias ATA has been proven legally and convincingly guilty of committing the crime of carrying, controlling and storing stabbing or stabbing weapons, without the right or without permission from the authorities; Sentencing the Defendant to imprisonment for six months. Furthermore, in the Supreme Court Decision Number 1070 K/Pid.Sus/2016; Stating that the Defendant Akbar Tanjung Bin (Alm) Baharuddin was legally and convincingly proven guilty of committing the crime of "Without the right to control and carry stabbing and stabbing weapons" in the following ruling: Sentenced the Defendant Akbar Tanjung Bin (Alm) Baharuddin to one year imprisonment. Then further in the Supreme Court Decision Number 566 K/Pid.Sus/2017. Stating that the Defendant Herman Ledom alias Edom bin Rahmat was proven legally and convincingly guilty of committing the crime of Without the Right to Carry Sharp Weapons; and in the verdict as follows: Imposing punishment on the Defendant therefore with imprisonment for five months, is in line with the Theory of purpose or de Relative Theorien in principle teaches that the imposition of punishment and its implementation are at least oriented towards efforts to prevent convicts (special prevention) from the possibility of repeating in the future, as well as preventing the wider community in general (general prevention) from the possibility of committing crimes such as crimes that have been committed by convicts and others.

c. Teori Gabungan

Theoretically, the joint theory attempts to combine the ideas contained in the absolute theory and relative theory. In addition to recognizing that the imposition of criminal sanctions is held to retaliate against the perpetrator, it is also intended that the perpetrator can be corrected so that he can return to society. This flow is based on the objectives of retaliation and maintaining public order which are applied in an integrated manner as in this theory when related to the three decisions to be reviewed, it is clear that if the three decisions are to be seen that in Supreme Court Decision Number 1146 K/Pid.Sus/2015. In this decision in the First Indictment: The actions of the Defendant as regulated and threatened in Article 2 paragraph (1) of Law Number 12/Drt/1951. Second Indictment: The actions of the Defendant as regulated and threatened in Article 2 paragraph (1) of Law Number 12/Drt/1951 and then in the verdict Stating that the Defendant Fathan Hadra alias ATA has been proven legally and convincingly guilty of committing the crime of carrying, controlling and storing stabbing or stabbing

weapons, without the right or without permission from the authorities; Sentencing the Defendant to six months imprisonment. Furthermore, in the Supreme Court Decision Number 1070 K/Pid.Sus/2016; on the Single Indictment, the actions of the Defendant are as regulated and punishable in Article 2 paragraph (1) of the Emergency Law of the Republic of Indonesia Number 12 of 1951.Stating that the Defendant Akbar Tanjung Bin (Alm) Baharuddin was legally and convincingly proven guilty of committing the crime of "Without the right to control and carry stabbing and stabbing weapons" in the following ruling: Sentenced the Defendant Akbar Tanjung Bin (Alm) Baharuddin to one year imprisonment. Then further in the Supreme Court Decision Number 566 K/Pid.Sus/2017; In the Single Indictment: The actions of the Defendant as regulated and punishable in Article 2 Paragraph (1) of Law of the Republic of Indonesia Number 12/Drt/1951; Stating that the Defendant Herman Ledom alias Edom bin Rahmat was proven legally and convincingly guilty of committing the crime of Without the Right to Carry Sharp Weapons; and in the verdict as follows: Sentenced the Defendant therefore to imprisonment for five months. This means that the panel of judges in each decision is in line with the principles in this theory, namely recognizing that the imposition of criminal sanctions is held to retaliate for the actions of the perpetrator, it is also intended that the perpetrator can be repaired so that he can return to society.

3. Analysis of Sentencing Decisions in View of the Definition of Disparity

As we all know that disparity can be interpreted as a difference or distance. In addition, in the definition from Black's Law Dictionary, disparity is inequality or a difference in quantity or quality between two or more things. With this definition, which is the focus of this research, the author finds that there is a disparity in the provision of criminal witnesses, which when examined further in the Supreme Court Decision Number 1146 K/Pid.Sus/2015. In this decision in the First Indictment: The actions of the defendant as regulated and threatened in Article 2 paragraph (1) of Law Number 12/Drt/1951. Second Indictment: The actions of the Defendant as regulated and threatened in Article 2 paragraph (1) of Law Number 12/Drt/1951 and then in the verdict Stating that the Defendant Fathan Hadra alias ATA has been proven legally and convincingly guilty of committing the crime of carrying, controlling and storing stabbing or stabbing weapons, without the right or without permission from the authorities; Sentencing the Defendant to six months imprisonment. Furthermore, in the Supreme Court Decision Number 1070 K/Pid.Sus/2016; on the Single Indictment, the actions of the Defendant are as regulated and punishable in Article 2 paragraph (1) of the Emergency Law of the Republic of Indonesia Number 12 of 1951.Stating that the Defendant Akbar Tanjung Bin (Alm) Baharuddin was legally and convincingly proven guilty of committing the crime of "Without the right to control and carry stabbing and stabbing weapons" in the following ruling: Sentenced the Defendant Akbar Tanjung Bin (Alm) Baharuddin to one year imprisonment. Then further in the Supreme Court Decision Number 566 K/Pid.Sus/2017; In the Single Indictment: The actions of the Defendant as regulated and punishable in Article 2 Paragraph (1) of Law of the Republic of Indonesia Number 12/Drt/1951; Stating that the Defendant Herman Ledom alias Edom bin Rahmat was proven legally and convincingly guilty of committing the crime of Without the Right to Carry Sharp Weapons; and in the verdict as follows: Sentenced the Defendant therefore with imprisonment for five months.

With the exposure of the criminal witness given to the defendant above, it is in line with the definition of disparity which says that disparity is the difference in the distance of criminal sanctions given, this raises the difference in criminal sanctions given to the perpetrators can have an impact and there are several possibilities. Of course for the community, criminal disparity in a sense that does not provide a basis: Can cause distrust of the community. There is a sense of dissatisfaction because it is not treated the same as other perpetrators. Then it creates a sense of injustice. Generates resentment towards the system, especially the judiciary. Can generate distrust towards law enforcement officials in the Criminal Justice System. Criminal disparity will be fatal, if it is associated with "Correction Administration". Convicts who after comparing the punishment then feel they are victims of "The Judicial Caprice", will become convicts who do not respect the law, whereas respect for the law is one of the targets in the purpose of punishment.

In relation to the explanation above, the public will certainly compare judges' decisions in general and find that disparities have occurred in law enforcement in Indonesia. Disparity in judges' decisions will have fatal consequences if it is related to public trust. This is because if this is not resolved and minimized, it can have a broad impact, namely the emergence of distrust of the judicial institution, then public dissatisfaction due to the injustice of judges in imposing criminal decisions. Especially for the convicted person, who feels unfairly treated with other convicts.

In addition, Harkristuti Harkrisnowo said that criminal disparity can occur in several categories, namely: 1. Disparity between the same criminal offense. 2. Disparity between criminal offenses that have the same level of seriousness. 3. Disparity of punishment imposed by one panel of judges. 4. Disparity between punishment imposed by different panel of judges for the same criminal offense.

Based on Harkristuti Harkrisnowo's opinion, we can find a place where disparity grows and has a history in law enforcement in Indonesia. Disparity does not only occur for the same criminal offense, but also for the level of seriousness of the criminal offense, and also for the judge's decision, both in one panel of judges and for different panels of judges in the same case. The reality of the scope of the growth of disparities has led to inconsistencies within the judiciary. The view of criminal justice

disparity is a justification provided that criminal disparity must be based on clear and justifiable reasons. This view is in line with the principle of freedom of judges in making decisions on cases submitted to them. This view is also a form of reflection in which judges, in their efforts to maintain the authority of the law, must be able to account for the decisions they make by providing correct and reasonable reasons for the cases they examine. If this is applied, logically criminal justice disparities will be accepted by the parties concerned and the community at large. Indeed, judges have the power to determine the punishment, but if it continues to occur, it will have the effect of distrusting the public and the situation will arise if a criminal offense is only punished as others are sentenced to light sanctions even though they commit serious violations of the law.

The factors that cause disparity in judges' decisions to occur in court, namely: Legal Factors where in criminal law in Indonesia Judges have very broad freedom to choose the type of punishment (straafsoort) they want, in connection with the use of an alternative system in criminal threats in the law, from several articles in the Criminal Code it appears that several main punishments are often threatened to the perpetrators of the same criminal act alternatively, meaning that only one of the main punishments threatened can be imposed by the judge and this is left to him to choose the severity of the punishment (strafmaat) to be imposed, because what is determined by legislation is only the maximum and minimum. Judges' factors include internal and external characteristics. Internal and external characteristics are difficult to separate, because they have been integrated as an attribute of a person referred to as human equation or personality of judge in a broad sense involving the influences of social background, education, religion, experience, and social behavior.

With the Supreme Court Decision Number 1146 K/Pid.Sus/2015; Supreme Court Decision Number 1070 K/Pid.Sus/2016; Supreme Court Decision Number 566 K/Pid.Sus/2017, it means that the three decisions are clearly said to be disparities, because in Supreme Court Decision Number 1146 K/Pid.Sus/2015. Sentenced the defendant to six months imprisonment. Furthermore, in Supreme Court Decision Number 1070 K/Pid.Sus/2016, the defendant Akbar Tanjung Bin (Alm) Baharuddin was sentenced to imprisonment for one year. Then further in the Supreme Court Decision Number 566 K/Pid.Sus/2017 imposing punishment on the Defendant therefore with imprisonment for five months. This means that with the witnesses provided, it is appropriate that these three decisions can be considered as decisions containing disparity of decisions.

CONCLUSIONS

The purpose of punishment in the three streams that exist in the objectives of punishment above, when related to the three decisions that will be the focus of this research, judging from the judge's consideration of each decision, the panel of judges prioritizes the neo-classical school because why in the neo-classical school in its main principle says not only to protect the interests of society, but also to protect the interests of individuals or individuals and in the consideration of the panel of judges from the decision to be reviewed, the author concludes that in every decision there will definitely be a difference in decision.

In the disparity of decisions when viewed from the operational principles of judges' considerations, there are 3 (three) aspects of judges' considerations in giving decisions in court, namely, Juridical Aspects, Sociological Aspects, and Philosophical Aspects, of which the Juridical Aspect is the most important and first aspect which refers to the applicable laws and regulations. Judges as applicators of laws and regulations must understand these laws and regulations by looking for laws and regulations related to the case being handled. With the content factor of the charges, the evidence factor, the judge's consideration factor and then the evidentiary factor which in the Law of Evidence in Criminal Cases must see some of this evidence, namely: First, Conviction-in Time, Second, Conviction-Raisonee, Third, Proof according to positive law (positief wettelijke stelsel), Fourth, Proof according to negative law (negatief wettelijke stelsel). Thus the conclusion that the author can describe as answering the two legal issues that the author has described above.

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