



## A Legal Analysis of Disparities in Judicial Decisions Regarding Human Trafficking Crimes

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**Abstract:** Disparities in judges' decisions in human trafficking cases indicate inconsistency in delivering verdicts for similar or related cases. The primary objective of this study is to identify various factors influencing the differences in judges' decisions in human trafficking cases, including how judges assess the elements of the case, consider aggravating and mitigating circumstances, and apply the law appropriately to realize justice in court rulings. The research method used is normative juridical, with data collection techniques including the study of court decisions from the Palangka Raya District Court, books, and scientific journals. The research findings show that there are several disparities in judges' rulings on similar cases. In the judicial process, a judge's conviction is based on legally valid and admissible evidence. Sentences, such as imprisonment and fines, are influenced by various factors, including mitigating conditions like young age, confession, remorse, and the defendant's attitude during the trial. Disparities in rulings occur due to differences in judges' convictions and the lack of clear guidelines in sentencing.

**Keyword:** Disparity, Human Trafficking Crime, Judges' Decisions.

### INTRODUCTION

Human trafficking is a serious criminal offense regulated under Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. In the application of the law regarding human trafficking crimes, judges play a crucial role in delivering fair verdicts based on factual evidence and applicable legal provisions. Article 18 of Law Number 48 of 2009 regarding Judicial Power states that judicial authority is carried out within the general court environment, which functions as a people's court for both civil and criminal cases. Although the legal framework is established, the implementation and law enforcement in human trafficking cases still face challenges.

In practice, there are variations in judges' decisions in similar cases, especially in the Palangka Raya District Court. Based on a review of several verdicts from the Palangka Raya

District Court on human trafficking cases from 2022 to 2025, the sentencing imposed by judges on perpetrators of human trafficking has not reached the maximum limits as stipulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. These discrepancies are evident in the differences in the types and severity of sentences, including both imprisonment and fines.

Judges, in their independent capacity, are required to remain impartial. Being an impartial judge means always ensuring the fulfillment of fair treatment in accordance with human rights, especially for suspects or convicts.

The boundaries of justice set by judges' decisions concerning human trafficking are indeed very complex, particularly regarding justice for both the offenders and the individuals who become victims of such crimes. When making decisions in a case, judges consider various aspects including the victims, the damages incurred, and other factors related to the violations. Differences in verdicts raise concerns about legal certainty and fairness for the parties involved, especially for human trafficking victims who are entitled to restitution as compensation for the exploitation they experienced.

This situation calls for a thorough legal analysis to understand the judges' considerations, the factors causing disparity in rulings at the Palangka Raya District Court, and the legal consequences of such inconsistencies. Such analysis is important to ensure that law enforcement against human trafficking crimes is conducted consistently, fairly, and provides maximum protection for victims while guaranteeing legal certainty for the public. Thus, the results of this study are expected to contribute to the enforcement of human trafficking laws and serve as input for the improvement of policies and judicial practices in the future.

The issuance of judgments in human trafficking criminal cases requires judges to have profound and comprehensive considerations, as these cases involve not only legal aspects but also humanitarian values and the protection of victims. However, judicial decisions may sometimes differ due to various considerations, which can result in inconsistencies in rulings. These inconsistencies have significant legal consequences on the achievement of justice and legal certainty, making it imperative to carefully analyze their impact on the judicial system and the protection of human rights.

## **METHOD**

The method used in this research is the Normative Juridical method with a Case Approach. The sources of data and legal materials consist of laws and regulations, several court decisions, books, and scientific journals related to the study. Data collection techniques involve library research. The data analysis technique is qualitative descriptive, aiming to comprehensively and deeply describe the phenomena or events being studied using data analysis in descriptive form.

## **RESULTS AND DISCUSSION**

### **Theories of Judgment and Sentencing**

#### **1. Absolute Theory (Retributive Theory)**

This theory holds the view that punishment is imposed solely because someone has committed a crime. The judge is obliged to impose a sanction as a form of retribution for the wrongdoing committed, without considering the benefits of the punishment for the offender or society. The imposition of a sentence is considered an absolute obligation to satisfy the sense of justice.

Punishment demands that every unlawful act must be repaid, as it is an absolute necessity justified as retribution. Therefore, any exceptions in sentencing aimed at purposes other than retribution should be disregarded. (Kant, 1797/1996).

Immanuel Kant's perspective strongly emphasizes the principle of pure retribution in criminal law. Kant argued that punishment is not a tool to achieve other goals such as rehabilitation or prevention but is a moral obligation to retaliate against wrongful acts. In this view, justice is upheld only if the offender receives a punishment proportional to their crime, not because the punishment will yield certain social benefits, but because it is ethically right to do so.

## **2. Relative Theory (Utilitarian Theory)**

Paul Anselm von Feuerbach stated, "A mere threat of punishment is not sufficient; it is necessary to impose punishment on the criminal" (Feuerbach, cited in Muladi, 1995).

This theory emphasizes that the mere existence of a threat of punishment is not enough to create a deterrent effect or enforce the law. According to Feuerbach, law enforcement must be accompanied by the actual imposition of punishment on offenders. In other words, for the law to function effectively as a social control tool, the criminal sanctions threatened in legislation must be genuinely applied. This approach shows that the effectiveness of the law depends not only on written norms but also on consistent application in reality. Without the actual execution of criminal threats, confidence in the legal system may weaken, and the potential for crime may increase.

In this theory, the imposition of punishment focuses not only on the crimes already committed but also on the goals to be achieved, such as protecting society, deterrence, and rehabilitating the offender. Punishment is seen as a means to prevent future crimes and ensure public order, not merely as retribution.

## **3. Combined Theory**

Criminal law is not only aimed at retribution for wrongdoing but also at securing society. It states that both punishment and measures are intended to prepare the convicted person to return to social life (Van Bemmelen, in Muladi, 1995).

This theory, on one hand, acknowledges the element of retribution in criminal law, but on the other hand, it also recognizes the elements of prevention and the rehabilitation of the offender. The combined theory emerged as a solution to the absolute and relative theories, which had not produced satisfactory results. This approach is based on the integrated purpose of retribution and maintaining public order.

This theory is a blend of the absolute and relative theories. The imposition of punishment is not only as retribution for the crime but also aims to protect society, prevent crime, and rehabilitate the offender. Thus, sentencing is expected to fulfill the element of justice while also providing benefits to society and the offender.

A judge in deciding a case can consider one or a combination of those three theories, depending on the case at hand and the objectives to be achieved in sentencing.

## **Human trafficking in Indonesia is Comprehensively Regulated Under Positive Law.**

The regulations are encompassed in the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) and reinforced by Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (Law on Human Trafficking Crimes). Human trafficking is a serious crime that threatens human rights and involves acts of recruitment, transportation, transfer, harboring, sending, or receiving a person by means such as threats of violence, kidnapping, fraud, abuse of power or vulnerable positions for the purpose of exploitation. This definition is consistent with the United Nations international protocol that recognizes human trafficking as a crime against humanity.

In Indonesia, the crime of human trafficking is regulated in the Criminal Code, particularly in the following articles:

**Article 295 KUHP :**

- 1) *Shall be subject to:*  
*imprisonment for a maximum of 5 years, anyone who intentionally causes or facilitates the commission of an indecent act by his child, stepchild, adopted child, or a minor under his supervision; or by a minor whose care, education, or custody has been entrusted to him; or by his unmarried child or subordinate who is underage, with another person;*  
*imprisonment for a maximum of 4 years, anyone who intentionally connects or facilitates an indecent act, except as stated in the previous paragraph, committed by a person he knows is underage or reasonably should suspect to be underage, with another person.*
- 2) *If the offender commits the crime as a profession or habit, the penalty may be increased by one-third."*

**Article 296 KUHP :**

*"Any person who intentionally causes or facilitates obscene acts by others, and makes it a source of livelihood or a habitual practice, shall be punished with imprisonment for a maximum of 1 year and 4 months or a fine of up to 15 million Rupiah."*

**Article 506 KUHP :**

*"Anyone who profits from the immoral acts of a woman and makes it their livelihood is subject to imprisonment for up to 1 year."*

These articles cover various forms of human trafficking, including those aimed at prostitution and child exploitation. However, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking provides more specific and stronger regulations regarding human trafficking. The management of prostitution services, including pimps, operators of prostitution practices, and even customers of such services, can be implicated under Law No. 21 of 2007 on the eradication of human trafficking.

The scope of involvement in the crime of human trafficking was previously defined in Articles 2 and 3, namely:

**Article 2 of Law Number 21 Year 2007 on the Crime of Human Trafficking**

- (1) *"Any person who recruits, transports, shelters, sends, transfers, or receives someone by threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage, or by giving payments or benefits even with the consent of the person who has control over another person, for the purpose of exploiting that person within the territory of the Republic of Indonesia, shall be punished with imprisonment of no less than 3 (three) years and no more than 15 (fifteen) years, and a fine of no less than IDR 120,000,000 (one hundred twenty million rupiahs) and no more than IDR 600,000,000 (six hundred million rupiahs)."*
- (2) *"If the act as referred to in paragraph (1) results in the person being exploited, the offender shall be penalized with the same sanctions as stipulated in paragraph (1)."*

**Article 3 of Law Number 21 Year 2007 on the Crime of Human Trafficking**

*"Any person who brings someone into the territory of the Republic of Indonesia with the intent to exploit them within the territory of the Republic of Indonesia or to be exploited in another country shall be punished with imprisonment of no less than 3 (three) years and no more than 15 (fifteen) years, and a fine of no less than IDR 120,000,000 (one hundred twenty million rupiahs) and no more than IDR 600,000,000 (six hundred million rupiahs)."*

This law details the elements of the crime of human trafficking and establishes severe criminal sanctions, ranging from a minimum of 3 years imprisonment to life imprisonment, as well as fines up to hundreds of millions of rupiah. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU TPPO) seeks to prevent, address, and

protect victims of human trafficking, including providing legal protection for witnesses and victims. Victims of Human Trafficking Crimes (TPPO) receive comprehensive legal protection through the UU TPPO, along with assistance to reintegrate into society. Support for this protection is also derived from Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, which established a special institution to guarantee the rights of victims and witnesses in legal proceedings. Thus, the state has an absolute obligation to ensure that victims of TPPO, who suffer physically, psychologically, and socially, receive thorough protection. Even if in some cases defendants claim that the victims were not forced, the UU TPPO still punishes the perpetrators, including operators of prostitution services, with criminal sanctions.

### **Sentencing Disparities in Judges' Decisions**

Sentencing disparity refers to the application of different criminal sanctions for the same crime or crimes of comparable severity without clear and legitimate justification (Muladi, 1995). Additionally, sentencing disparity may occur in the process of punishing offenders who commit crimes jointly without referring to relevant legal categories. Sentencing disparity pertains to differences in criminal penalties imposed for crimes with the same type or characteristics. This phenomenon often occurs in judicial practice as a consequence of the principle of judicial independence. When delivering verdicts, judges consider various factors, including aggravating and mitigating circumstances related to the defendant, which ultimately influence the severity or leniency of the sentence imposed.

Sentencing disparities can be classified into several types (Harikrisnowo, 2003), including:

#### **1) Disparities between the same crimes:**

Differences in court rulings may occur even when cases involve the same criminal elements legally. Similarity in the type and elements of a crime does not always result in identical verdicts because judges have the discretion to consider various aspects in sentencing. These considerations include the facts revealed during the trial, the defendant's personal circumstances, the defendant's attitude during the trial, and non-legal factors such as social and economic background. For example, in cases of joint assault, two defendants with similar cases may receive different sentences—one might be sentenced to 2 years and 8 months, and the other to 6 years in prison—depending on the judge's assessment of each defendant's situation.

#### **2) Disparities in crimes of comparable severity:**

Disparities may arise in cases involving different types of crimes that have equivalent levels of seriousness and legal impact. For example, two different offenses causing significant harm to society might receive different punishments due to differences in legal interpretation, individual judicial policies, or legal cultural influences such as bribery practices or subjective use of discretion. Such inconsistency can lead to legal uncertainty and create a perception of injustice among the public.

#### **3) Disparities in decisions by a single panel of judges:**

Disparities can also occur within one panel of judges handling cases involving multiple defendants in the same or similar cases. Differences in sentences are usually based on the assessment of each defendant's level of involvement, role in the crime, existence of mitigating or aggravating factors, and attitude during the trial. Therefore, even though the same panel adjudicates the case, the sentences for each defendant may differ significantly.

#### **4) Disparities when different panels of judges impose different sentences for the same crime:**



Differences in verdicts can arise between two or more panels handling cases with similar criminal characteristics. Such disparities are generally caused by variations in legal interpretation, differing judicial policies, depth of fact-finding, and non-legal considerations like the social and economic background of the defendants. For instance, in drug cases across different jurisdictions, one defendant might receive a prison sentence, while another in a similar case might be sentenced to rehabilitation. According to research related to this writing, sentencing disparities in similar cases can erode public trust in the judicial system because they suggest that justice depends on which judge handles the case rather than consistent legal principles. This leads victims and their families to feel that justice has not been fairly served, resulting in disappointment. Furthermore, sentencing differences create legal uncertainty for offenders who cannot accurately predict the consequences of their actions, undermining one of criminal law's crucial functions deterrence.

From the above thoughts of Harkristuti Harkriswono, it can be concluded that sentencing disparity has a long history and continuously grows within the law enforcement process in Indonesia. Disparity is found not only within the scope of the same crime but also at the level of the seriousness of the offense. Furthermore, it also occurs in judicial decisions, both those made by the same panel of judges and by different panels handling the same criminal case. The reality of the expanding scope of disparity leads to inconsistency within the judiciary.

The existence of differences in sentence severity or sentencing disparity in law enforcement often causes public doubt as to whether judges or courts have truly fulfilled their duties to uphold the law and justice (Harkrisnowo, 2003). From a sociological perspective, this disparity is seen as evidence of the lack of justice in society. Although formally this condition is not considered to violate any rules, many forget that every judicial decision should always contain an element of justice.

### **Considerations of Judges in Rendering Different Decisions**

Judges have independent authority in making decisions to uphold law and justice. Article 1 paragraph (1) states that "Judicial power is the sovereign power of the state to administer justice in order to uphold law and justice." In rendering decisions, judges in Indonesia are not bound by previous court rulings. This is because the Indonesian legal system adheres to the civil law system, which does not require judges to follow precedents or jurisprudence. Article 5 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power is an important basis that emphasizes judges must be independent in carrying out their duties. It states, "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice living in society." The explanation of Article 5 paragraph (1) clarifies that "In the Indonesian legal system, judges are not bound by jurisprudence, but may use it as consideration or reference." Because Indonesia adopts the civil law system, judges are not absolutely bound by previous decisions as in the common law system.

Although Indonesia applies the civil law system, jurisprudence still functions as an important unwritten source of law because existing regulations often do not regulate every situation in detail (Simanjuntak, 2019). He states, "Jurisprudence is a legal instrument to maintain legal certainty." Judges may still refer to previous rulings (jurisprudence) as consideration to maintain legal consistency and guarantee legal certainty in judicial practice. Thus, judges have the freedom to independently assess and decide cases, even if the cases are similar to previous ones. Therefore, it is possible to have different decisions on similar cases. Judges' decisions are based on fulfilling the elements of the crime of human trafficking and relevant legal principles, such as intent (*mens rea*), the act committed (*actus reus*), and the defendant's ability to be held accountable for their actions. Legal considerations are essentially part of the trial process where judges consider facts revealed during the proceedings. When

rendering a decision, judges must base it on laws because they play a fundamental role in deciding conflicts presented to them. This conviction is not only limited to evidence as stated in Article 184 of the Criminal Procedure Code (KUHP), but also involves the role of evidence found at the crime scene. This aligns with Article 39 paragraph (1) of KUHP regulating evidence seized by investigators.

The verdict issued by the Panel of Judges at the Palangka Raya District Court is a guilty verdict with a prison sentence ranging from 2 to 5 years and a fine between 100 million and 200 million rupiahs. There are several conditions that can lead to a reduction in criminal penalties for an individual. These conditions include cases where someone is still in the stage of attempting a crime (as regulated in Article 53 paragraphs 2 and 3 of the Indonesian Criminal Code). If a person only assists or participates in a criminal act, rather than acting as the principal offender (according to Article 57 paragraphs 1 and 2 of the Criminal Code). If the offender is still a minor or underage (based on Article 47 of the Criminal Code). Furthermore, mitigating circumstances in court decisions include young age, no previous criminal record, admission of the offense, remorse for the act, currently working or studying, good behavior, and forgiveness from witnesses or victims.

In decision-making, judges can be influenced by various factors such as religion, culture, parenting style, values, norms, and others. Essentially, these influences stem from differences in perspectives, which affect judges' considerations when making decisions (Umar Seno Adji, 2008). Disparities in verdicts at the Palangka Raya District Court are often influenced by several complex factors requiring deeper understanding. One significant factor is the socio-economic background of the defendant. In some cases, judges consider whether the defendant comes from a poor family or faces economic hardships that might have influenced their behavior. Sometimes, judges grant leniency to defendants perceived as having limited access to education or job opportunities. This is important because the defendant's involvement in a criminal act could be influenced by their difficult socio-economic conditions, ultimately affecting the judge's decision in sentencing.

Another factor is the victim's role, which also becomes a consideration for the judge in deciding the sentence. In human trafficking cases, for example, the judge must assess whether the victim was involved voluntarily or was exploited. If it is clear that the victim was not involved voluntarily and was a victim of a crime, this can serve as a basis for the judge to impose a harsher penalty on the perpetrator. However, if the victim is considered to have been involved or does not show remorse, this may also influence the judge's decision in determining the sanctions.

### **Case Study Analysis of Disparities in Several Judges' Decisions at the Palangka Raya District Court**

The number of human trafficking cases continues to increase every year, largely due to the lenient punishments handed down by judges. This study will outline several examples of human trafficking case verdicts from the Palangka Raya District Court, as shown in the following table.

**Table 1 Data Table Obtained and Processed from Several Decisions of the Palangka Raya District Court from 2020 to 2025.**

No.	Case Number	Laws/Articles that are violate	Judge's Decision
1.	55/Pid.Sus/2020/PN Plk	Article 2 paragraph (1) of Law Number 21 Year 2007 concerning the Eradication of the Crime of Human Trafficking	Imprisonment for 2 years and a fine of 100 million Rupiah

2.	232/Pid.Sus/2022/PN Plk	Article 2 paragraph (1) of Law Number 21 Year 2007 concerning the Eradication of the Crime of Human Trafficking	Imprisonment for 5 years and 6 months and a fine of 120 million Rupiah
3.	327/Pid.Sus/2023/PN Plk	Article 2 paragraph (1) of Law Number 21 Year 2007 concerning the Eradication of the Crime of Human Trafficking	Imprisonment for 3 years and a fine of 120 million Rupiah
4.	355/Pid.Sus/2024/PN Plk	Article 2 paragraph (1) of Law Number 21 Year 2007 concerning the Eradication of the Crime of Human Trafficking	Imprisonment for 3 years each and a fine of 120 million Rupiah
5.	326/Pid.Sus/2024/PN Plk	Article 2 paragraph (1) of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code	Imprisonment for 3 years and 6 months each and a fine of 120 million Rupiah
6.	373/Pid.Sus/2024/PN Plk	Article 2 paragraph (1) of Law Number 21 Year 2007 concerning the Eradication of the Crime of Human Trafficking	Imprisonment for 5 years and a fine of 200 million Rupiah

The table of case verdicts shows that the sentences handed down by judges in human trafficking cases tend to be lighter than the maximum prison terms prescribed by law. The disparity in verdicts at the Palangka Raya District Court arises due to differences in legal interpretation, judicial discretion, and cultural-legal factors.

### Legal Consequences of Inconsistent Decisions on the Goals of Justice and Legal Certainty

Several main theories regarding the purpose of law, such as the ethical theory, utility theory, and the mixed theory, focus on achieving justice, usefulness, and legal certainty. Broadly speaking, the law aims to realize order, justice, and welfare within society.

#### 1) Ethical Theory

The ethical theory places justice as the primary purpose of law, where every individual obtains their rights fairly to maintain balance in society. Aristotle distinguished two forms of justice, namely distributive justice and corrective justice (Aristotle, 2007). Among others:

**a) Distributive Justice:** Refers to the proportional allocation of rights or resources based on a person's merit or contribution.

**b) Corrective Justice:** Concerns equal distribution, often in the context of transactions or exchanges.

The ethical theory put forward by Aristotle considers justice as the core of the legal system and social life. In this view, law is not merely a set of rules regulating behavior but also a moral instrument to ensure that each person receives their rights fairly. By distinguishing between distributive justice (the allocation of rights and obligations according to proportion) and corrective justice (restoration of balance due to violations).

#### 2) Utility Theory

Unlike ethical theories, Utility Theory prioritizes usefulness or benefit as the purpose of law. This approach holds the belief that laws should be designed to produce the greatest happiness or benefit for the greatest number of people in society. Jeremy Bentham is the



central figure of utilitarianism, known for his concept of “the greatest happiness for the greatest number” (Bentham, 1789/2007). Bentham’s utilitarianism emphasizes that an action is considered right if it produces the greatest amount of benefit or happiness for the greatest number of people. In the context of law and policy, this perspective is regarded as logical and beneficial because it encourages decision-making oriented toward the public interest. This theory evaluates laws based on their consequences or impact, rather than abstract values.

### 3) Mixed Theory

The Mixed Theory attempts to combine elements from ethical and utilitarian theories. This theory argues that the law aims to achieve three pillars simultaneously: justice, utility, and legal certainty (Radbruch, 1946). Gustav Radbruch is one of the prominent figures of this theory, emphasizing the importance of these three fundamental values. In practice, the mixed theory often applies the principle of priority, placing justice as the foremost and primary goal, followed by utility, and then legal certainty.

Gustav Radbruch (1878-1949) was a prominent legal scholar who highlighted the conflict between justice and legal certainty. While he also acknowledged utility as a purpose of law, Radbruch specifically discussed how these two key values often clash and must find a balance. According to him, if the existing law (which guarantees certainty) leads to extreme injustice, then justice must take precedence, even if it sacrifices legal certainty. This shows the significant attention he gave to both principles, even when they stand in opposition.

Differences in judges' decisions in human trafficking criminal cases (TPPO) have a substantial impact on justice and legal certainty. Inconsistencies in sentencing can reduce the effectiveness of law enforcement because the public cannot be certain about the punishment for similar offenses. This uncertainty can undermine public trust in the justice system, as there is no assurance that the law will be enforced fairly and consistently.

When judges' decisions vary greatly, there may be injustice in the treatment of defendants who should be treated equally before the law. Additionally, if sentences are lighter than those mandated by law, the deterrent effect on offenders diminishes. One of the primary objectives of law enforcement is to deter offenders from repeating their crimes.

The variations in judges' rulings in human trafficking cases relate to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, because the protection provided under this law requires alignment with fair and consistent application of sentencing. The lack of firm sentencing guidelines allows judges broad discretion in their rulings, which can lead to disparities, perceptions of injustice, and weak protection for victims. Therefore, a sentencing approach that emphasizes justice and individualization must be accompanied by clear guidelines so that the application of Law No. 13 of 2006 on Witness and Victim Protection can be effective in the criminal justice process dealing with human trafficking. Consequently, more consistent and equitable law enforcement is necessary to ensure justice for all parties, both perpetrators and victims, and to establish better legal certainty in society.

## CONCLUSION

The criminal sanctions against perpetrators of human trafficking are regulated in Law No. 21 of 2007 concerning the eradication of human trafficking. In judicial proceedings, a judge's conviction in deciding a case must be based on valid evidence in accordance with the applicable legal provisions. Judges, in carrying out their duties, should not rely solely on the textual law; they are also obliged to consider the legal values and sense of justice that live within society. This is in line with Article 5 paragraph (1), which emphasizes that judges must understand and apply social values when deciding a case. Judges cannot acquit a convicted

person without clear reasons if there is sufficient evidence. Furthermore, criminal sentences, such as imprisonment and fines, can be influenced by various factors, including mitigating circumstances such as young age, first-time offense, confessions, and remorse from the perpetrator. Differences in sentencing are also affected by the defendant's condition because judges consider social, economic aspects, and the defendant's attitude during the trial, such as whether the defendant shows respect or not. The victim's role is also very important in influencing the judge's decision, especially in cases like human trafficking, where whether the victim was involved voluntarily or not can affect the severity of the sentence imposed on the perpetrator. The disparity in judges' decisions is a consequence of judicial discretion in assessing similar criminal acts. Mitigating and aggravating factors of the defendant are the main considerations causing variations in criminal sanctions.

There are three main legal theories regarding the purpose of law: the ethical theory which prioritizes justice, the utilitarian theory emphasizing benefits for the greatest number, and the mixed theory that combines both and adds legal certainty as an important element. Gustav Radbruch asserts that in case of conflict between justice and legal certainty, justice must be prioritized. However, in law application, especially in human trafficking crimes, there is inconsistency in judges' decisions, leading to differences in sentencing levels. This condition causes injustice for defendants and reduces legal certainty, thus undermining public trust in the justice system. Such inconsistency also weakens victim protection and reduces the deterrent effect on perpetrators. Therefore, the legal goals of justice, utility, and legal certainty have not been fully realized due to the lack of uniformity in decisions and clear sentencing guidelines.

## REFERENCE

- Aditya, U. R. (2015). Asas dan tujuan pemidanaan dalam perkembangan teori pemidanaan. Pustaka Magister.
- Adji, U. S. (2008). Hukum Peradilan Pidana. Erlangga.
- Aristoteles. (2007). Etika Nikomakea (Alih bahasa: Ahmad Sunawari Long). Pustaka Pelajar.
- Bentham, J. (2007). An introduction to the principles of morals and legislation. Dover Publications. (Karya asli diterbitkan tahun 1789)
- Chandra, T. Y. (2022). Hukum pidana. PT Sangir Multi Usaha.
- Fernandes, C., Madjid, N. V., & Fahmiron. (2024). Disparitas putusan hakim terhadap tindak pidana penganiayaan secara bersama-sama. *Jurnal Sakato Ekasakti Law Review*, 3(3), 50-62.
- Gulö, N., & Muharram, A. K. (2018). Disparitas dalam penjatuhan pidana. *Jurnal Masalah-Masalah Hukum*, 47(3), 211-222.
- Gendi, Y. P. (2022). Disparitas penjatuhan pidana terhadap pelaku tindak pidana perdagangan orang. (Skripsi, Universitas Sriwijaya, Palembang).
- Hamka, W. (2018). Disparitas putusan hakim dalam perkara tindak pidana penganiayaan (Studi putusan Pengadilan Negeri Sungguminasa) (Skripsi, Universitas Islam Negeri Alauddin Makassar)
- Harkrisnowo, H. (2003). Rekonstruksi Konsep Pemidanaan: Suatu Gugatan Terhadap Proses Legislasi dan Pemidanaan di Indonesia. *Majalah KHN Newsletter*.
- Harwati, T. (2015). Peradilan di Indonesia. Sanabil.
- Julastri, & Husna, L. (2019). Analisis yuridis disparitas putusan hakim terhadap tindak pidana pencurian dengan kekerasan yang menyebabkan matinya korban. *Jurnal Scientia*, 1(2), 50-58.
- Kaban, A. T. (2020). Tinjauan yuridis terhadap tindak pidana perdagangan orang oleh penyedia jasa pekerja seks komersial (Studi putusan nomor 741/Pid.Sus/2016/PN.Mdn). (Skripsi, Universitas Medan Area, Medan).

- Kant, I. (1996). *The Metaphysics of Morals* (M. Gregor, Trans.). Cambridge University Press. (Original work published 1797)
- Kitab Undang-Undang Hukum Acara Pidana (KUHAAP).
- Kitab Undang-Undang Hukum Pidana (KUHP).
- Lubis, S. E. (2023). Disparitas putusan hakim Pengadilan Negeri Medan tentang tindak pidana perdagangan orang ditinjau dari konsep keadilan. *Jurnal Autentik (Jurnal Hukum dan Sosial Humaniora)*, 3(1).
- Mahkamah Agung Republik Indonesia. (2006). *Pedoman perilaku hakim*. Mahkamah Agung.
- Manurung, F., Syahrin, A., Ablisar, M., & Sunarmi, S. (2021). Disparitas putusan hakim terhadap tindak pidana narkoba di wilayah hukum Pengadilan Negeri Rantauprapat (Studi kasus putusan No.159/Pid.Sus/2019/PN.RAP dan putusan No.626/Pid.Sus/2020/PN.RAP). *Law\_Jurnal*, 2(1)
- Muladi. (1995). *Kapita selekta sistem peradilan pidana*. Badan Penerbit UNDIP.
- Pengadilan Negeri Palangkaraya. (2022). Putusan No. 232/Pid.Sus/2022/PN Plk.
- Pengadilan Negeri Palangkaraya. (2023). Putusan No. 327/Pid.Sus/2023/PN Plk.
- Pengadilan Negeri Palangkaraya. (2024). Putusan No. 355/Pid.Sus/2024/PN Plk.
- Pengadilan Negeri Palangkaraya. (2024). Putusan No. 326/Pid.Sus/2024/PN Plk.
- Pengadilan Negeri Palangkaraya. (2024). Putusan No. 373/Pid.Sus/2024/PN Plk.
- Pengadilan Negeri Palangkaraya. (2020). Putusan No. 55/Pid.Sus/2020/PN Plk.
- Radbruch, G. (1946). Statutory lawlessness and supra-statutory law. In P. Stein (Ed. & Trans.), *The Legal Philosophy of Gustav Radbruch* (pp. 58-65). Oxford University Press. (Original work published 1946)
- Raya, B. C., & Widowati, Y. (2021). Disparitas penjatuhan pidana terhadap pelaku perdagangan satwa yang dilindungi. *Indonesian Journal of Criminal Law and Criminology (IJCLC)*, 2(1).
- Santi, L. M. (2021). Faktor-faktor penyebab disparitas pidana dalam pertimbangan putusan hakim terhadap pelaku tindak pidana pembunuhan berencana, *Verstek*, 10(2), 437-447.
- Simanjuntak, E. (2019). Peran Yurisprudensi dalam Sistem Hukum di Indonesia. *Jurnal Konstitusi*, 16(1), 83–105. <https://doi.org/10.31078/jk1615>
- Sulaiman, A. (2019). *Pengantar ilmu hukum*. UIN Jakarta bersama Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia (YPPSDM).
- Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang (UU TPPO).
- Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.
- Undang-Undang No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban.
- Yosal, C., & Firmansyah, H. (2024). Tinjauan terhadap tindak pidana perdagangan orang dalam perspektif hak asasi manusia yang dilakukan pengelola jasa prostitusi. *Jurnal Ilmu Hukum, Humaniora, dan Politik*, 5(1), 1-14.