International Journal of Society Reviews (INJOSER) https://injoqast.net/index.php/INJOSER
Vol. 4 No. 3 (2026), pages: 120~134 e-ISSN: 3030-802X

IMPLEMENTATION OF DISPARITIES IN THE INDONESIAN JUSTICE SYSTEM

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Abstract

Sentencing disparity, namely the imposition of different sentences for the same or comparable offences without a justifiable reason, remains a persistent problem that erodes the sense of justice in the Indonesian criminal justice system. This article analyses the normative basis, causes, manifestations and control of sentencing disparity, particularly following the entry into force of the new Criminal Code (Law No. 1 of 2023) and the new Criminal Procedure Code (Law No. 20 of 2025) on 2 January 2026. Using normative legal research with statutory, conceptual and case approaches, the study finds that disparity stems from constitutionally protected judicial independence, wide statutory sentencing ranges, the long absence of uniform sentencing guidelines, uneven prosecutorial practice, and limited consistency and transparency of judgments. Not all disparity is objectionable; the problem lies in unwarranted disparity. Control mechanisms now include the sentencing guidelines in Articles 53 and 54 of the National Criminal Code, Supreme Court Regulation No. 1 of 2020, the Supreme Court chamber system and ethical oversight, but their effectiveness depends on judicial compliance, the quality of judicial reasoning and the handling of the transition between legal regimes. The article recommends cross-offence sentencing guidelines, a comparative judgment information system, and a duty to explain departures from guidelines.

Keywords:sentencing disparity; judicial independence; sentencing guidelines; National Criminal Code; criminal justice system.

1. Introduction

Indonesia is a country of law that guarantees the equal position of every citizen in the law and the right to fair legal certainty and equal treatment before the law.[1] The constitutional guarantee is tested most clearly when the judge sentences a crime. It is at that stage that the formulation of norms in the law turns into concrete suffering for the defendant, and at that stage the public also assesses whether the law works fairly. In Radbruch's frame of mind, a good verdict must balance justice, legal certainty, and utility; the three are not always in line, but they must not negate each other.[2]

[1]Article 27 paragraph (1) and Article 28D paragraph (1) of the Constitution of the Republic of Indonesia of 1945.

[2]Gustav Radbruch, "Five Minutes of Legal Philosophy (1945)," ed. Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15; see also Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya Bakti, 2000).