

**Pendekatan Logika Hukum
Sebagai Upaya Meminimalisir Disparitas Pidana
Dalam Sistem Peradilan Pidana**

Syamsul Fatoni

Fakultas Hukum Universitas (Negeri) Trunojoyo, Jalan Raya Telang Po Box 2
Telang - Kamal - Bangkalan Jawa Timur, E-mail: eni_dawam@yahoo.com

ABSTRACT

In The Integrated Criminal Justice System (ICJS), a judge has an important role to optimize the purpose of special and general prevention. However, the judgments frequently remain disparity of sentencing. In addition, disparity of sentencing brings negative effects on the society in law enforcement, it creates the new crime and the failure of controlling the convicted criminals. Besides the law substance, the cause of disparity is personality of the judges which covers social background, education, religion, experience, social activity and other factors about dissimilarity concept of The Integrated Criminal Justice System. In fact, in system approach, the concept of disparity of sentencing is debatable because of some factors, such as environmental condition and economy class, so that the justice and benefit of law can be realized. Therefore, verisimilitude approach which applies logic of law is necessary to minimize disparity of sentencing. There is an opinion among jurists that there is a correlation between the law and the logic. Logical is special characteristic of law about its mutual correspondence, norms of law with logical principles. According to B. Arief Sidharta, law theories systematically can be divided into three branches, 1) Law theories, 2) Law and logic, 3) Methodology. Moreover, law and logic also discuss juridical argumentation, deontic logic, and the relation between law and language. Nevertheless, the thesis in the progressive law is people paradigm and in practical law is rule paradigm. Holmes stated that logic of rule is perfected with logic of experience. In the progressive law, a law is for human, but in the practical law, human is for law and logic of law. Progressive law enables to face disparity of sentencing so that the justice in sociologically and psychologically terms can be applied without ignoring the pure law. Logic of law approach enables to minimize criminal disparity of sentencing through having similarity perception of law and law enforcement which leads the definition of fallacies of law, comprehending logic of induction and deduction, forming and creating law, increasing supervision to the judges work, rising the function supervisor and observer judges in the penitentiary, having the similar perception of The Integrated Criminal System to control the convicted criminals in the penitentiary, and effort to support trust of the society to the law.

Keywords: *Logic of law, disparity of sentencing, the integrated criminal justice system*