

## **Discovering the Meaning of Justice in Judges' Verdicts on Narcotics Crimes in Indonesia**

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**ABSTRACT:** *The purpose of this study is to discover the meaning of justice contained in the judges' verdicts of district court on narcotic crimes. Justice has substantive and procedural meanings. Substantive justice is measured by the parameters of objectivity, honesty, impartiality and rationality of the verdicts of the judges, while the procedural justice is measured by the parameters of the fulfillments of formal elements of the verdicts. The findings of the study indicate that the contents of the verdicts on narcotic crimes have not fully met the criteria of substantive and procedural justice. Aspects of substantive justice that have not been met include aspects of impartiality and rationality of the verdicts, by which some judges did not fully consider the defense of legal counsel of the defendants as the basis of their consideration, some of the judges' consideration were of low quality, and some of the judges' argumentation and reasoning were hard to understand. With regard to two parameters of procedural justice, it is found that there are still elements of formal requirements which were not included in the verdicts such as element of the charges, a brief description of the facts and circumstances as well as means of evidence obtained from the trial, the status of whether the defendants were arrested, remained in custody or released; criminal charges of the prosecutor, and the aggravating and relieving circumstance for the defendants. These findings indicate that the several judges at District Court are not professional yet in constructing their verdicts.*

**KEYWORDS** - *procedural and substantive justice, judges' verdicts, narcotics crimes*

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### **I. INTRODUCTION**

Based on the findings of several studies that have been conducted by the Judicial Commission of Republic Indonesia, there are various problems faced by judges in the process of constructing their verdicts. The problem was related, among others, to their weakness in formulating the bases of their considerations, their weak ability in interpreting legal facts, their lack of capacity in exploring the basic philosophy used to formulate consideration, and there were also drawbacks associated with their personal morality in handling cases. In short, the process of making legal decisions by judges contains many issues that have resulted in the poor quality of their verdicts. [1]

Similarly, results of studies that have been conducted in the field of legal psychology found several weaknesses in the judges' decision-making process in Indonesia that resulted in bias or impartial verdicts. In criminal cases, the weakness is shown by steps taken by judges that begin with studying articles indicted by public prosecutors, and then composing the story (the verdict) based on information obtained from the facts revealed at the hearing. This condition has a psychological impact on judges in that their verdicts would be much affected by the provisions of legislation and not really based on the facts revealed objectively in the trial. Judges tend to merely fit the selected articles with the story that resulted from the examination of the trial. [2] Such a method is similar to the method of deductive thinking. According to Alkostar (2008), this method is less appropriate to be applied by the judges of first-level court that examines *judex factie*. To examine *judex factie*, judges should use the inductive method of thinking instead of deductive one. [3]

This study examines several judges' verdicts on narcotic crimes. The selection of this case is based on an understanding that the phenomenon of narcotics crimes in Indonesia has been already at the alarming level, if not an emergency one. Data compiled by the National Narcotics Agency of Republic Indonesia (Badan Narkotika Nasional/BNN) says that by 2006 as many as 15,000 people became the victims of narcotic crimes. This means that an average of 41 people is narcotics victims every day. In 2008 there were about 3.2 million to 3.6 million narcotics users. This means that 1.99 percent of the whole population is narcotics users. In 2010 the number of users rose 2.2 percent and increased again in 2011 to 3.8 million. BNN predicts by 2015 the number of users will reach 5 to 6 million people and 80 percent of users are young people. The high level of narcotics crimes has resulted from, among others, the acts of the syndicate and drugs circulation with highly sophisticated techniques and keep-changing modes. Therefore it needs an extra ordinary law enforcement in dealing with narcotics crimes. [4]

In October of 2009 Indonesia enacted Law No. 35 on Narcotics, in lieu of Law No. 22 of 1997 on Narcotics that is considered outdated (henceforth Narcotics Law). Narcotics Law is a material law that can be used by judges in adjudicating and dealing with narcotics crimes. Under the Narcotics Law, judges will examine and prove the facts related to the narcotics crimes brought to them. Thus the judges will interpret acts committed by the perpetrators of this crime. In the end they will make a verdict in relation to the matter. The process of constructing the verdict by the judges in handling narcotic crimes is the object of this study.

Based on the description of the background of the problem, we formulate the research problems as follows: have the selected judges' verdicts on narcotics crimes fulfilled both substantive and procedural justice? To measure the meaning and quality of justice, this study is based on objective parameters of the concept of justice which is divided into substantive and procedural justice.

## II. RESEARCH METHODS

This study can be categorized as a doctrinal legal research. It examines legal norms as the object of study. Norms are understood here as courts' verdicts on narcotics criminal cases. The main source of data of this study is the judges' verdicts on narcotics criminal cases in several district courts. In addition, data are also obtained from scientific journals, magazines, newspapers, archives, legislation, and various references that are relevant to the research problem. [5]

Data analysis was conducted by sorting out and classifying the court's verdicts on narcotics cases based on certain criteria. Content analysis of the verdicts was further conducted based on the elements of the verdicts to explore the meaning of justice in both substantive and procedural meanings. To measure whether the verdicts of the judges in the court already reflect a just verdict in both procedural and substantive senses, certain parameters are made and applied.

## III. RESULTS AND DISCUSSION

*Description of the Object of Study.* The object of this study is the verdicts of several District Courts (Pengadilan Negeri) on cases of narcotic crimes. The study is focused on exploring and discovering the meaning of justice which is translated into procedural and substantive justice in these verdicts. The selection of the first-level court verdicts as the object of research is based on the consideration that the verdicts of this level of court have more complete information than those of the appeal court level (High Court) and the cassation and reconsideration verdict level (Supreme Court). The completeness of the information is associated with the facts revealed at the hearing, in particular the testimony of witnesses, experts and the defendant or defendants and other evidence in court.

The number of first level court verdicts that became the object of this study is twenty verdicts in total. Verdicts were obtained and selected from those of the first-level courts that were uploaded on the website of the Supreme Court. These twenty verdicts include 6 verdicts from Singkawang District Court (DC), 5 verdicts from Lhokseumawe DC, 3 verdicts from Sampang DC, 2 verdicts from Batussangkar DC and Yogyakarta DC respectively, and 1 verdict from Klaten DC and Kota Baru DC respectively. [6]

*Analysis of Aspects of Substantive Justice.* Conceptually, substantive justice in the judges' verdicts is defined based on four (4) parameters, namely objectivity, fairness, impartiality, and rationality. In this study, a judge's verdict is regarded as an objective one when the information, statements, facts or evidence relied upon to prove that the defendant committed the crime and guilty are factual information, statements, facts or actual evidences or proofs. This objective parameter can be viewed from four aspects, namely (i) the verdict that the defendant is guilty of the crime is supported by strong reasons; (ii) statement that defendant is proven guilty of committing the crime is supported by two valid items of evidence; (iii) consideration of the judges in concluding that the defendant is guilty of committing the crime is considered at least sufficient; and (iv) the quality of the judge's argument in proving the criminal offense committed by the defendant is considered sufficient. [7]

Based on the research findings, the objectivity of the verdicts with regard to the support of evidence to declare the defendants guilty is illustrated in Table 1 below.

Table 1. Support of evidence to declare the defendants guilty

Support of evidence	Frequency	Percentage
Two means of evidence	20	100
No evidence	0	0
Total	20	100

Source: Decisions of DC

The table shows that the objective criteria by which the verdict that the defendant is found guilty of committing narcotics crimes is supported by two means of evidence has been met. In other words, the overall verdicts that the judges handed down on narcotics crimes took into account at least two valid means of evidence in the process of convicting the defendants. Thus the criteria on that decision was supported by two means of evidence have been met in proving that the defendants are guilty.

The next objective parameter by which the verdict that the defendant is found guilty of narcotic crimes is supported by strong reasons is illustrated in Table 2 below.

Table 2. Support of reasons to prove that the defendants are guilty

Reasoning	Frequency	Percentage
Reasons are provided	20	100
Reasons are not provided	0	0
Total	20	100

Source: Verdicts of DC

The table shows that in proving that the defendant committed the narcotics crimes, the judges have strong reasons. Reason is the consideration of the judges on the facts revealed through both the prosecution and the defense that the defendant did himself or through his legal counsel. Thus the objective indicator based on the criteria that the verdicts must be supported by strong reasons has been met in proving the defendant's actions and mistakes.

With regard to the quality of the judges' objective consideration in proving that the defendant are guilty of narcotics crimes is illustrated in Table 3.

Table 3. Quality of judges' considerations in the proving process

Quality of judges' consideration	Frequency	Percentage
Good	5	25
Moderate	12	60
Poor	3	15
Total	20	100

Source: Verdicts of DC

The table shows that although the consideration of the judges in proving that the defendants are guilty of committing the crime was supported by two legal evidences and strong reasons, the quality of their consideration is not entirely good. Data shows that there are five verdicts whose judges' consideration can be categorized as good, 12 verdicts categorized as not really good and 3 verdicts categorized as poor. Thus the quality of the judges' consideration in proving criminal offense is dominated by moderate and good considerations.

Furthermore, the honesty of the judges' verdicts is based on the following criteria: (i) the compatibility between the facts presented by witnesses and the defendant or the defendants in the trial and the information or facts that are considered by the judges as the true facts; (ii) the compatibility between the facts in the trial and those in the verdict; and (iii) the honesty of the judges in proving the elements of the offenses charged against the defendants is considered sufficient.

Based on the research findings, the honesty of judges in proving that the defendant committed narcotics crimes is illustrated in Table 4 below.

Table 4. The honesty of the judges in proving that the defendant is guilty

Honesty of judges	Frequency	Percentage
Honest	20	100
Not honest	0	0
Total	20	100

Source: Verdicts of DC

The table shows that the honesty of the judges in proving that the defendant committed the narcotics crime is reflected in all the verdicts under examination. Thus, the honesty indicator as one of the criteria of substantive justice is fulfilled.

The honesty of the judges can also be seen from the correspondence between the judges' considerations and the verdict. This can be seen in Table 5 below.

Tabel 5. Compatibility between judges' consideration and the verdicts

Compatibility between judges' consideration and the verdicts	Frequency	Percentage
Compatible	20	100
Incompatible	0	0
Total	20	100

Source: Verdicts of DC

The above table shows that in the overall 20 verdicts there was correspondence between the judges' legal considerations and their verdicts. Honesty of the judges can also be seen from the correspondence between the facts of the trial and the verdict. The research findings are illustrated in Table 6 below.

Tabel 6. Compatibility between facts in the trial and verdicts

Compatibility between facts in the trial and verdict	Frequency	Percentage
Compatible	20	100
Incompatible	0	0
Total	20	100

Source: Verdicts of DC

In the court trial finding the facts is a fundamental goal. The facts of the trial will be used as a reference in giving consideration by the judges, which will lead to a just verdict. Therefore the facts of the trial must be in accordance with the facts of the verdict. As illustrated in the table above, correspondence exists between the facts of the trial and the facts of the verdict.

Furthermore, the impartiality of the judges' decision in prosecuting a case can be measured from: (i) the weight of witnesses' testimony or *a charge* witnesses is proportional to the information given by the defendant and *a de charge* witnesses; (ii) in proving the elements of the crime, the judge take into account the statements of *a de charge* witnesses; (iii) to prove the elements of the criminal acts committed by the defendants, the judges take into account the defense of the legal counsel or the defendant, and the impartiality of the judges is reflected in proving the elements of criminal offense of the defendants.

Based on the research findings, the impartiality of judges in deciding on the narcotics crimes is illustrated in the following tables.

Tabel 7. Quality of Impartiality of Judges in Adjudicating Criminal Acts

Quality of judges' impartiality	Frequency	Percentage
Good	6	30
Moderate	12	60
Poor	2	10
Total	20	100

Source: Verdicts of DC

The table illustrates the impartiality of the judges in adjudicating criminal offenses. The table shows that the impartiality of six judges (30%) were categorized as good, 12 judges (60%) are considered moderate and 2 judges (10%) are poor. Furthermore, the findings on whether defense by legal counsel was taken into account by the judges are illustrated in Table 8 below.

Table 8. Whether or not defense by legal counsel is taken into account by judges

Whether defense by legal counsel is considered by judges	Frequency	Percentage
Yes	3	15
No	17	85
Total	20	100

Source: Verdicts of DC

Based on the above table it can be seen that three judges (15%) considered the defense of the legal counsel of the defendants and 17 others (85%) did not consider the defense of legal counsel of the defendants. This means that the judges did not fully take into account the defense of the defendant's legal counsel.

Next, the verdicts of the judges are said to have a rational qualification if they are based on the following parameters: (i) the judges' line of reasoning is coherent and logical; (ii) the quality of the judges' legal reasoning of in making their arguments is at least considered sufficient; and (iii) the ease in understanding the thinking and argumentation of the judges. [8]

Table 9. The reasoning of the judges in making their verdicts

Judges' reasoning in making verdicts	Frequency	Percentage
coherent and logical	20	100
incoherence and not logical	0	0
Total	20	100

Source: Verdicts of DC

With regard to the legal reasoning of the judges, the above table shows that the reasoning of the judges in making their verdicts is coherence and logical in all cases under study. Furthermore, the quality of the judges' reasoning in giving legal arguments can be shown in Table 10 below.

Table 10. Quality of judges' legal reasoning in giving legal arguments

Quality of legal reasoning	Frequency	Percentage
Good	3	15
Moderate	13	65
Poor	2	10
Total	20	100

Source: Verdicts of DC

The above table shows the quality of the legal reasoning of the judges in giving the argument about narcotics crimes. Three judges (15%) are considered as having good legal reasoning, 13 others (66%) have moderate legal reasoning and 2 judges (10%) have poor legal reasoning. With regard to the quality of judges' arguments in proving criminal acts can be shown in Table 11 below.

Table 11. Quality of judges' arguments in proving criminal acts

Quality of judges' legal reasoning	Frequency	Percentage
Good	7	35
Moderate	12	60
Poor	1	5
Total	20	100

Source: Verdicts of DC

Based on the above table, seven verdicts can be categorized as having a good quality of judges' arguments (35%), 12 verdicts (60%) are of medium quality and one (5%) has a poor quality. Furthermore, the findings on whether the judges' arguments are easy to understand can be shown in Table 12 below.

Table 12. Whether or not the judges' arguments are easy to understand

Whether or not judges' arguments are easy to understand	Frequency	Percentage
Easy to understand	8	40
Quite difficult to understand	11	55
Very difficult to understand	1	5
Total	20	100

Source: Verdicts of DC

It is certainly easy to understand the rationale and argument of a court ruling made by the judge. The above table presents the level of ease in understanding the judges' reasoning and arguments. It can be seen that 8 verdicts (40%) are relatively easy to understand, 11 (55%) are quite difficult to understand (55%) and 1 decision (5%) is very difficult to understand.

*Analysis of Procedural Aspects of Justice.* Procedural justice has two parameters: first, the fulfillment of the formal requirements of the elements specified in Article 197 of the Criminal Procedure Code; second, the fulfillment of human and legal rights of the parties involved in the criminal justice system. In this study, procedural aspect of justice is only limited to the protection of the legal rights of the defendants that can be explored in the first-level court verdicts. [9]

Based on Article 197 of the Criminal Procedure Code, the purpose of the inclusion of formal requirements in the verdicts is to keep the legal process or the criminal justice process run in a fair and just manner. In addition, the inclusion of elements of formal requirements in the verdicts is also intended as a means of evaluation of the criminal justice process that is already underway; whether it is in accordance with the procedures prescribed by law. Moreover, the inclusion of elements of formal requirements in the verdicts is intended to make sure that the judges are professional in carrying out their functions and duties in prosecuting the perpetrators of the crimes and at the same time protecting the human and legal rights of the the defendants as well as protecting public interest.

The fulfillment of human rights and legal rights of the parties involved in the criminal justice system can be explored in the first-level court verdicts. But the legal rights of the defendants are very limited in number because of the limited information available in the judges' verdicts concerning such rights.

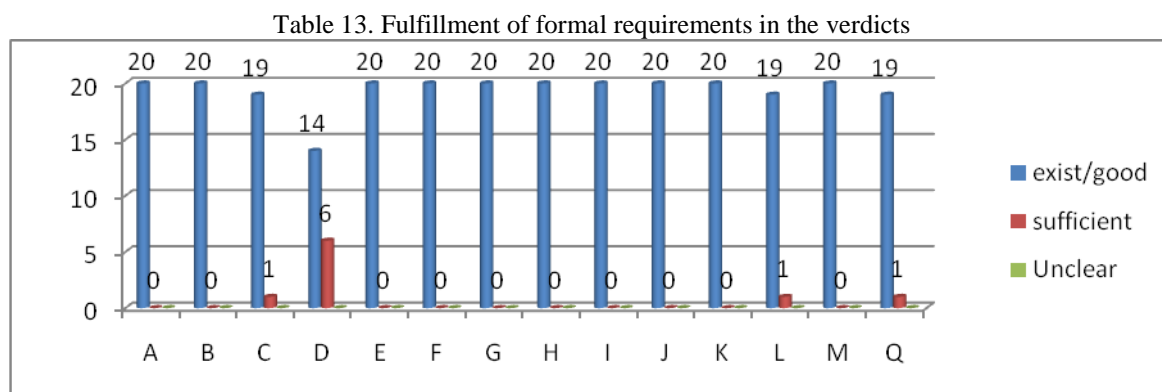
Legal rights of the defendants that can be explored in the first-level court verdicts include their right to be informed clearly in a language understood by them about any accusation against them, their right to obtain legal assistance of one or more legal counsel, their right to call witnesses or experts who are in favor of them, their right to the presumption of innocence, and their right to express their opinions freely without pressure (threat of violence and violence). In addition, part of their rights is the right to get immediate examination by investigators and for their case to be immediately submitted to public prosecutors, the right for their case to be promptly brought to court by public prosecutors, and their right to be tried immediately by the court.

The right of the defendants to be informed in a language that is clear and understandable to them about what is charged against them is measured from the statement of the defendants made after the prosecutor finished reading the indictment that they understood the charges. The right of the defendants to obtain legal assistance of one or more legal counsels is measured from whether or not the defendants were accompanied by a lawyer in the judicial process. As with the right of the defendants to call witnesses or experts who benefit themselves, it is measured from whether the defendants call witnesses or experts who relieve themselves (*de charge*) at the time of their trial. The rights of the defendants to the presumption of innocence is measured by whether or not the defendants objected to the examination in the process of investigation, prosecution, and trial that direct information from the defendants that they committed the crime and were found guilty. The right of the defendants to express opinions freely without pressure (threat of violence and violence) is measured from the presence or absence of threats and violence against the defendants.

The right of the defendants to get immediate examination by investigators, their right for their case to be submitted immediately to public prosecutor, their right for their case to be promptly brought to court by public prosecutors, and their right to be promptly tried by the court are measured from the length of time required by each law enforcement agency in running their respective functions and duties in the process of law enforcement with regard to the length of the maximum period of detention under the authority of each law enforcement agency. The length of detention period of the defendants by the investigators is 60 days (20 days plus 40 days), detention by the public prosecutor is 50 days, and the longest period of detention by the judges of the first-level courts is 90 days.

If the investigation by investigators, prosecution by public prosecutor, and the trial by judges are shorter than 10 days than the maximum detention period by investigators, prosecution by public prosecutor and court trial by judges it means the right of the defendants to have their case processed without delay by investigators, prosecutors, and judges has been met. If the completion of the investigation is in accordance with the maximum period of detention by the investigation, the completion of the prosecution by public prosecutors in accordance with the maximum detention period by prosecutors, and the completion of the trial by judges are in accordance with a maximum detention period by judges, it means there is a reasonable settlement. When the process of investigation by investigators, prosecution by public prosecutor, and court trial by judges exceeds the maximum detention period by each law enforcement agency, it means there is violation against the rights of the defendants to have their case processed timely in accordance with the respective powers of law enforcement agency.

The findings of research on the fulfillment of the formal requirements which contains elements of criminal verdict in the cases of narcotic crime are described in Table 13 below.



Source: Verdicts of DC

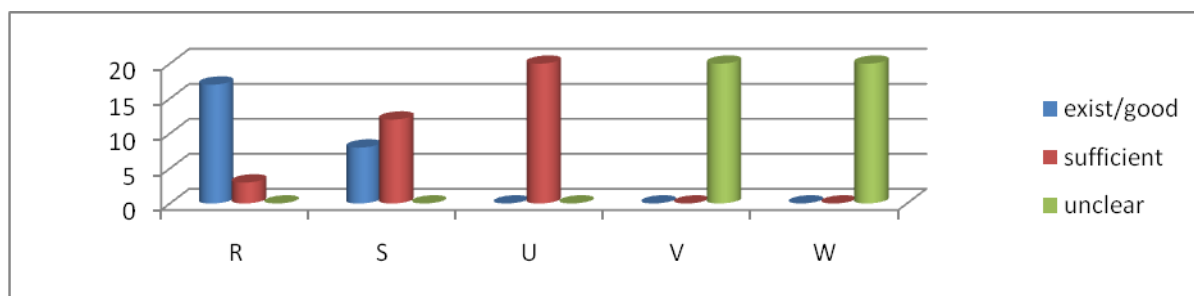
Based on the above table, elements of formal requirements that must be included in the first-level court verdicts in the cases of narcotics crimes have been met in full within twenty verdict narcotic crimes under study. The table also identifies elements of formal requirements which were not included in the verdicts on the narcotics crimes. These include: one verdict that did not contain the indictment; six (6) verdicts that did not contain a brief description of the facts and circumstances as well as means of evidence obtained from the trial; 1 (one) verdict did not contain the order of whether the defendants were to be arrested, remained in detention or released, and one (1) verdict did not contain the explanation of the legal bases of violation that became the basis of punishment.

The table also identifies elements of formal requirements that were not included by the judges within 14 (fourteen) verdicts on the cases of narcotic crimes, which include four (4) verdicts that did not contain a brief description of the facts and circumstances as well as means of evidence obtained from the trial; 1 (one) verdict that did not contain criminal charges put forward by the prosecutors, and another one did not contain aggravating and relieving circumstances; and two (2) verdicts that did not contain status of whether the defendants were to be arrested, remained in detention or released.

The failure to include formal requirements in the verdict as provided in Article 197 of the Criminal Procedure Code in the cases of narcotic crimes resulted from the carelessness and negligence of the judges in making their verdicts. This also shows that judges are not professional in their profession as a law enforcement agent.

The second parameter of the procedural aspect of justice associated with the fulfillment of the legal rights of the defendants in the cases of narcotics crimes can be described in Table 14 below.

Table 14. Fulfillment of legal rights of defendants in the verdicts of narcotics crimes



Source: Verdicts of DC

Based on the table it can be seen that from the total of 20 (twenty) verdicts in the narcotics crimes, there are as many as 17 (seventeen) defendants (85%) who stated that they understand the contents of the indictment of the prosecutor, while there were three (3) defendants (15%) whose rights were not mentioned in their verdicts.

Regarding the fulfillment of the rights of the defendants to legal counsel, the findings show that there are eight (8) defendants (40%) who use their legal right to have legal counsel, whereas the defendants who were not accompanied by legal counsel are more numerous, that is 12 defendants (60%). The defendants who were not accompanied by a lawyer were unaware of their rights in the proceedings of the importance of a lawyer in order to defend their legal rights in the trial. The defendants who were aware of the importance of legal assistance from a lawyer in the criminal justice process were much less than the defendants who were not aware of it. This shows the lack of public confidence in the legal advisors as an institution that defends the legal rights and interests of the defendants. This is also a reflection of the high cost of using legal services provided by legal counsel that is inaccessible and unable for justice seekers.

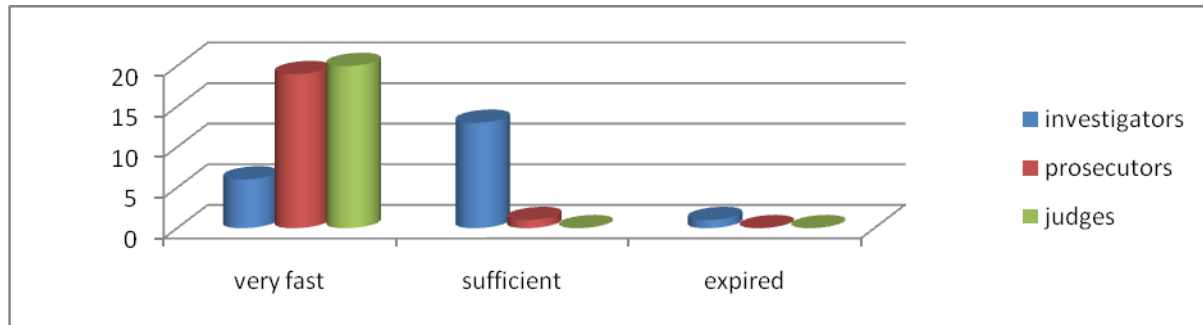
The portrait of the fulfillment of the rights of the defendants in 20 verdicts in the narcotic crimes shows that none of the defendants who brought defense witnesses. Defense witnesses brought by the defendants are of significance in refuting descriptions or statements of witnesses *a charge* proposed by public prosecutors to prove their charges in court. In addition to not calling for any defense witnesses, 20 defendants of the narcotics crimes also did not propose an expert to strengthen their legal position and to refute or deny information and statements of witnesses and experts presented by the public prosecutor.

Data, however, are not clear on the fulfillment of the rights of the defendants to obtain legal treatment based on the principle of presumption of innocence and their right to give testimony freely, without pressure, threats, and violence. That is, data or the information contained in the verdicts of these 20 cases of narcotic crimes can't be identified based on established parameters. Thus the description of the fulfillment of the rights of the defendants can't be displayed due to limitations of the data or information.

Next will be explained the fulfillment of the legal rights of the defendants to get immediate examination by investigators and for their case to be submitted to public prosecutors, their right to have their case immediately brought to court by public prosecutors, and their right to be tried immediately by court.

The description of the fulfillment of the rights of the defendants in the first-level court verdicts in the cases of narcotic crime is provided in Table 15 below.

Table 15. Fulfillment of defendants' right to have their case proceed immediately



Source: Verdicts of DC

The fulfillment of the rights of the defendants to have their case investigated by investigators, prosecuted by public prosecutors and tried by judges with no delay in the narcotic crimes can be described as follows: out of 20 (twenty) cases of narcotic crimes, six (6) investigations were expedited immediately, 13 (thirteen) were considered reasonable investigation, and 1 (one) was considered as violating the maximum time limit of investigation.

Furthermore, there are 19 (nineteen) prosecutions that were expedited timely and 1 (one) prosecution exceeded the maximum time limit of prosecution. Regarding trials by judges, all 20 (twenty) cases underwent adjudication in timely manner with none proceeded beyond a reasonable maximum time limit for trials in the first-level courts.

#### IV. CONCLUSION

From the four parameters of substantive justice in the courts' verdicts on narcotic crimes, namely objectivity, honesty, impartiality and rationality, it was found that the court verdicts have not yet fully met the four criteria of substantive justice. Aspects that have not been met include impartiality and rationality. In the aspect of impartiality, there were still judges who have not fully considered the defense of legal counsel of the defendants. In the aspect of rationality, there is still a low quality of the judges' consideration and some of the judges' reasoning and arguments are difficult to understand.

With regard to two parameters of procedural justice, namely the compliance with elements of formal requirements prescribed by Article 197 of the Criminal Procedure Code and the fulfillment of the rights of human and legal rights of the parties involved in the criminal justice system, there are still elements of formal requirements that were not included in the verdicts of the case of narcotics crimes. This includes the failure to include in the verdicts the actual charges; a brief description of the facts and circumstances as well as means of evidence obtained from the trial; the status of whether the defendants were to be arrested, remained in detention or released, criminal charges of the prosecutor; and the aggravating as well as relieving circumstances for the defendants. As a result of non-fulfillment of the inclusion of formal requirements in the judges' verdicts, the verdicts can be considered null and void, meaning that they never exist. A verdict that is considered null and void not only has no binding force for execution, it also harms the interests of the community, the state or public.

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