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Policy Criminal Fines and Imprisonment Substitute Fines

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ABSTRACT

Background of this research was problems that arose in the policy of the fine sentences changed to the prison sentences imposed on conviction criminal of the drugs. This problem had causes controversy, it caused sense of injustice and bad precedent on the part of main tasks judges as an ordinary implementing the sentence policy. This research was using the normative research methodology. This method was mainly operating on the qualitative legal data or legal materials. The choosing of the legal issue as a data was analyzed in this research. The legal materials collection primarily was Statutes and judge's decisions that related to the imposing of criminal sanction on the convicted criminals. Particularly the imposing of the replacement of the fine sentences with the prison sentences. Indonesia Narcotic Acts Number 35 of 2009, is the main legislation from which all the legal data related to the problem explored and analyzed in this research. The main research analysis was used juridical analysis with the qualitative data approach, although it was not intention to set aside all the quantitative data related to the problem, it shown in the statistical data (tables) as a mentioned in the research. Researchers found that the policy implementation for the substitute of imprisonment penalty as a penal policy for the convict in the case of narcotic because it is a legal dictation. The results also showed that the criminal sanctions that policy criminal penalties such as fines or criminal penalties such as imprisonment substitute aims expediency.

Penelitian ini dilatarbelakangi masalah dalam implementasi kebijakan pidana denda dan pidana penjara pengganti denda bagi pelaku tindak pidana narkotika yang masih menjadi polemik dalam masyarakat. Metode yang digunakan dalam penelitian ini adalah penelitian hukum normatif yang dilakukan sebagai upaya untuk mendapatkan bahan hukum yang diperlukan sehubungan dengan permasalahan. Bahan hukum yang digunakan adalah bahan hukum primer, yang terdiri dari Undang--Undang dan putusan hakim. Undang-Undang Narkotika dan putusan--putusan pengadilan yang relevan dengan perumusan masalah penelitian ini telah diteliti untuk menjawab perumusan permasalahan yang ada. Analisis menggunakan metode analisis yuridis, yang selalu bersifat kualitatif, namun tidak mengabaikan pula data-data kuantitatif, seperti terlihat dalam tabel. Peneliti menemukan bahwa implementasi kebijakan pidana penjara pengganti pidana denda sebagai suatu penal policy bagi terpidana dalam perkara narkotika karena itu adalah dikte hukum. Hasil penelitian juga menunjukkan bahwa Sanksi pidana yaitu kebijakan hukuman pidana berupa denda atau pidana berupa penjara pengganti denda bertujuan kemanfaatan.

Introduction

The danger threat of drug abuse requires serious attention from the public and the governments of throughout the nation in the world. It was common knowledge, an indication of the dangers of drug abuse can be proven with so many narcotics illegally, even it has been a business for a particular community. Gains derived from illicit narcotics business was doubled (Morrison, 1997; Baynham, 1995). The circulation and the illicit trade in the drugs contradictory to scientific fact has justified the permissibility of legal narcotics business. Justifications according to the law that permissibility circulation of narcotics and trade due to a substance or medication that is very useful and necessary for the treatment of certain diseases.

On the other side, drugs trafficking is a crime. As for the types of criminal sanctions to be used in an effort to cope the abuse of narcotics and psychotropic substances as a penal policy in the Drugs Act comprise of imprisonment, the death penalty, life imprisonment and fined. Criminal sanctions are a means or tools in an effort to make countermeasures against crime, including drug crimes. In other words, the criminal sanction is a tool or means to achieve the purpose of punishment. Adjusting the magnitude of criminal sanctions to partially account for organizational culpability creates a system which simultaneously compromises its stated goal of deterrence without significantly improving the inconsistencies of criminal strict liability (Guttel and Medina, 2007; Ehrlich, 1996). In the Indonesian criminal justice system, Criminal sanctions applicable currently only two forms of sanctions.

The first sanctions are the criminal penalties. While the second form of sanctions, which is the action, which can also be seen as a punishment. Indonesia adopts two-track system of punishment known as double track system (DTS) (Hartanto et al., 2015). The double track system (DTS) is not a new idea within the sentencing system (Li, 1996). This concept has been adopted very restrictively in the Indonesian Penal Code (commonly known as 'KUHP'), and extensively in other special legislations. Principally, the idea of the double track system emphasizes the basics of balance or equality in the imposition of sanctions in criminal law, namely sentence and treatment (Windari and Widjajanti, 2015).

Espoused a DTS marked the developments that occurred in the system penal law sanctions from classical to modernists' stream and neoclassical. The conceptual transformation of the criminal justice system and sentencing is also happening in the world. In general, it has encouraged the emergence of the spirit to look for alternative penal more humane. Intended to shift the paradigm of criminal law that is more humane, because if it was originally known is the concept of punishment-oriented retaliation (Jones and Goldsmith, 2005), then into the concept of punishment that leads to the coaching (treatment philosophy).

The application of criminal sanctions deprivation of liberty or in this case, namely imprisonment could still have said to be more dominant. When compared with the use of criminal sanctions such as criminal penalties as a tool alleviation efforts crime, imprisonment is still the mainstream. Similarly, the implementation of criminal sanctions against doers in narcotic cases.

Narcotics Act contains some article that explicitly contains criminal sanctions for perpetrators of narcotics or psychotropic substances. Especially with regard to penal policy in the form of criminal fines and imprisonment replacement fined as the focal concern of this study, the Narcotics Act can be found the formulation of Article 148 of the Narcotics Act, that "In case the penalty punishment as referred to the Law is unable to be paid by the perpetrator of the crime of Narcotics and/or of Narcotics Precursor, the perpetrator thereto shall be charged under imprisonment maximum 2 (two) years as the substitute of the penalty unable to be paid".

The generally understood by law enforcement, that the imposition of criminal sanctions pecuniary penalties are almost never performed or paid for by doers in narcotic cases. The perpetrators of narcotic crime more likely to choose imprisonment in lieu of criminal penalties which they could not pay. The phenomenon of the implementation of imprisonment in lieu of a criminal penalty in the Indonesian criminal justice system common throughout the District Court in Indonesia.

The implementation of phenomenon of imprisonment in lieu of a criminal penalty in Indonesia's criminal justice system, which is a matter of like or dislike. Generally, it is because the convict would rather undergo imprisonment in lieu of criminal penalties, rather than paying huge fines. In other words, the possible causes of the phenomenon of replacement of imprisonment penalty is the difficulty in implementing the decision of the criminal penalties to convicted narcotics for their general perception among the convict that the fine imposed crimi-

nal sanctions that amount of money to be paid is too high.

The sanction of imprisonment in lieu of penalty by the criminal prosecution policy makers formulated with maximum criminal models. Criminalization policy formulation in the Narcotics Act provides a maximum imprisonment of two years is evidence of the formulation of punishment in Article 148 of the Narcotics Act.

In this research, researchers suggested a juridical argument. That the old policy formulation with a maximum punishment of two years' imprisonment are opportunities or authorized by law for judges in court practice using their discretionary powers for decide upon lower than the maximum sanctions.

The implementation of imprisonment as a substitute for a relatively short fined it became an option for the prisoners because there really is a chance, and it is legally justified to choose the imprisonment rather than pay a fine. In other words, that this should be valid and legal because it was given by a judge and is known in the Indonesian criminal justice system. In addition, that criminal penalties are considered too high and also the convict in pay penalties that there had been is not able to pay the number of fines that have been decided by a judge (Moon, 2004).

The purpose of the criminal prosecution cannot be separated from the general understanding of the criminal purpose; therefore, it is important to know what the objectives of the criminal law itself. The purpose of criminal law is none other than the law in general purpose, namely to achieve welfare and public order, but in fact criminal law it can cause suffering.

The court relied on retributive theory in deciding that an inmate's competence for execution must focus not on his mere awareness of the state's plan to execute him, but on his understanding of the reasons for the punishment, as a community sanction (Adams, 2016). Criminal imposed solely because the person has committed a crime or quia peccatum est. Crime is the result of an absolute that must exist as a retaliation against the person who committed the crime. Thus, the justification of crime lies in the crime itself. According to this theory, sentencing is a means to protect the interests of society. Theory relative view of sentencing is not retaliation for mistakes perpetrators but a means of achieving a useful purpose to protect the society towards prosperity (Cragg, 1992).

This theory gave rise the purpose sentencing as a means of prevention, whether special prevention is aimed at the perpetrators and prevention aimed at the commonly society. Theory is the pivot to the three objectives sentencing:

1. Preventive; to protect the public, placing separate the perpetrators from society.
2. Deterrence; so, that creating fear to committing crimes.
3. Reformative; long-term, order to be able maintain the constancy of public attitudes to criminal.

In conjunction with a penalty in the sentencing, there is also the theory or knowledge of Penal Policy. The theory of criminal fine policy is described as part of the modern criminal science, as stated Pratt and Eriksson (2013), policy criminal as a science and an art that aims practical to allow the rule of positive law formulated better and to give guidance not only to lawmakers, but also to the court to apply the Act, including fine sanction.

Enforcement of criminal law fines is basically to restore community security and order that had been disrupted, due to a criminal act, so that creating legal certainty. Enforcement of criminal fine is the fulfillment of the obligations for a person who has violated the prohibition in order to restore the balance of the law or amends by paying certain amount of money. In conjunction with fines, there is a theory/knowledge about penal policy is the science that aims to enable practical positive legal regulations formulated better, member's guidelines on lawmakers, also told the court that implement them. Penal policy is relevant for use in the imposition of fines substitute imprisonment in criminal narcotic according to Indonesian criminal justice system.

Research Methods

Approach method applied in this research is normative juridical approach, by reviewing, testing and examining aspects of criminal law and its implementation overall, or what is called the theory of Justice Dignity as a systems approach (Montada and Maes, 2016). Specifications research in the proposed of this research is including research analytical, not only illustrate the problem, but the rules of the criminal law, particularly in the criminal sanctions of fines and criminal substitute fines for doers in narcotic cases based Narcotics Act, further explains the implementation and obstacles in implementation of the Law on Narcotics and seeking alternatives to the problems faced.

To obtain secondary data can be either the primary legal materials, such legislations and other data related to the research proposal, and then on the other hand is supported by secondary law such as the opinions of experts. The data required is obtained by technique study of the document, by collecting data achieving the implementation of the Law on Narcotics from year to year, but it also carried an interview with doers in narcotic cases, the judge in the High Court and the District Court of Pontianak, West Kalimantan and the Attorney in Pontianak District Attorney as implementer.

The data analysis was analyzed using qualitative normative (Van Hoecke, 2011). Normative for of this research starts from the existing legislation as positive law (Ferejohn and Weingast, 1992). While the qualitative data obtained systematically arranged to further analyze by looking at the description of the sentence (Berry and Berry, 1999). The location of a normative research, including the location where the implementation of the policy formulation of criminal law, in this case the sanction of imprisonment in lieu of a criminal fine for the convicted criminal offenses in the case of narcotics is "location" is understood as legislation, and especially verdict related issues become a focal concern of this research

Results and Discussion

In judicially that imposed of criminal fines only reserved for the misdemeanor. Regarding the rules provided by Article 205 Paragraph 1 of the Criminal Procedure Code. The purpose of the criminal fine is the victim and the perpetrator can be forgiveness and reconciliation so as to create a harmonious community life (Moon, 2004). Similarly, the criminal fines become an alternative for the penalty of imprisonment under seven years.

Commonly understood that type of grave crimes is still sentenced to prison. Criminal fines are also applied in offenses relating to property, such as fraud. However, the imposition of criminal sanctions should be sorted motives and modus operandi of the crime. When the offenses that impact does not affect wider community, it is better to apply criminal sanctions fines. In relation with that sprung up the idea that in order to better functioning of criminal fines, it would require the addition of criminal compensation (Garoupa and Gomez-Pomar, 2004). Criminal law reflects its time and depending on the thoughts that live in the community, whether it's about the form its sentencing, also on the severity of the crime (Tonry, 2001; Kennedy, 1994).

Type criminal fine known in the Indonesian legal system so far is fines as criminal sanctions and fines as administrative sanctions (Guttel and Medina, 2007; Ehrlich, 1996). However, essentially two types of the same fines. Both are a form of punishment. The difference between the two-type's fine sanction in the way it looks or mechanisms for imposing, to whom the fine is paid, as well as on the legal consequences when fines are not paid by the convict.

In Drugs Act contains several articles that explicitly includes criminal sanctions for perpetrators of narcotics or psychotropic substances. Especially on the penal policy in the form of criminal fines and imprisonment replacement fined as the focal concern of this research, in the perspective of policy theory of criminal fines, judicially that criminal fines imposed only for light criminal acts. Regarding the rules provided by Article 205 Paragraph 1 of the Criminal Procedure Code. The principle of criminal fines has a purpose as an alternative to imprisonment was also caused by the consideration that has become common knowledge found imprisonment is not effectively applied to convicts sentenced under one year. Criminal penalties are the same principal criminal position with imprisonment.

According Adams (2016), the purpose sentencing is a variety of forms: deterrent, both addressed to the offenders themselves and to those who could potentially be a villain; protect the people from crime; improvements (reforms) to criminals. Reforms to the criminals is seen as a criminal purpose of the most modern and popular well as not merely improve the conditions of imprisonment but to find an alternative that is not as criminal in fostering lawbreakers. The Importance criminal fines as an alternative to imprisonment also due to the consideration that has become common knowledge that imprisonment is not effectively applied to convicts sentenced under one year, or a short. Criminal fines are the same principal criminal position to imprisonment (Garoupa and Gomez-Pomar, 2004). However, imprisonment is more often selected.

Criminal fines and imprisonment substitute criminal fine is a form of policy formulation as outlined in the legislation. However, the description and analysis presented also presented a research finding is that the policy formulation that can be done through what is called the judge's discretion. In other words, the judge through the formulation of the implementation provisions of the legislation regulating the drug in its decision also conducts the policy formulation, formulated by lawmakers and also at the same formulation of policies implemented by

the judge through the decision handed down by the judge concerned.

Noting Act narcotic applicable researchers found deontology of the policy formulation sentencing committed by legislators through Act narcotics, considering the sociological fact to be eradicated or reduced, which state loss of drug abuse. Thus, the formulation of policy such as the imposition of criminal fines for abusers in the hundreds of millions to billions of rupiahs. In the perspective of justice dignified theory, its postulate emphasizes the law is born of the soul of the nation, then assess the policy formulation of criminal fines and imprisonment substitute criminal fine in the Narcotics Act, carried out with due regard to the arrangements applicable in the Indonesian criminal justice system. Policy formulation criminal fines and imprisonment criminal fine substitutes aimed at eradication of drug trafficking were also found in the Narcotic Act effect.

Law enforcement, including judges apply criminal sanctions fines or imprisonment as a substitute for criminal fines for perpetrators of narcotic cases in which, legally, as can be seen through the formulation of preamble or explanation of the content of the Narcotics act, reflecting the public's understanding or logic reason behind the concept of setting the criminal law relating to narcotics.

The view that imprisonment in lieu of a criminal penalty is justified because the criterion is expediency (Windari, and Widjajanti, 2015). Law enforcement, including judges apply criminal sanctions fines or imprisonment as a substitute for criminal penalties for perpetrators of narcotic in it, by juridical can be seen through the formulation of preamble or an explanation for content of the Law on Narcotics, reflecting the public's understanding or the ratio legist which was behind the concept of setting the criminal law relating to narcotics.

Researchers saw a mutual symbiotic relationship between drugs and crimes are exploited by criminals (Morrison, 1997). Linked with the understanding juridical in the Narcotics Act, then it is understandable that the law behind the formulation of a crime, in this case, including the act of abusing narcotics as penal policy in the Narcotics Act in fact is an act which is not likely to be done by humans when perceptual abilities a human in a good state. Revealed from Narcotics Act that nature intoxicating and addictive narcotic that can cause people to do crimes, among others meet the needs of drug addiction addictive.

Countermeasure Policies of Narcotics Crime in the Future

Criminal law, in this case includes a penal policy, can be used in preventing and combating crimes, including crimes of abuse, trafficking and production of narcotics (Baynham, 1995). The use of criminal law in tackling drug crimes is supported by several characteristics of criminal sanctions. As is known, for example criminal sanctions as part of the criminal law in this study focused on the type of penalty and imprisonment as a kind of substitute criminal fine though it has limitations in handling crimes drug abuse.

Implementation of criminal fines and imprisonment replacement for criminal fine can still executed, even if there is a criticism, that characterize the criminal law sanctions as ultimum remedium containing paradoxical and contradictory nature can cause negative side effects (Ehrlich, 1996). The use of criminal law in handling crimes just is aimed at tackling/curing symptoms. Criminal sanctions only a symbiotic treatment and not treatment impossible, because the properties of such complex crimes beyond the reach of the criminal law.

Law of criminal sanctions is only a small part, of the means of social control, which is not possible to overcome of crime problems as a humanitarian issue, and community complex (Coleman, 1988). Implementation of criminal sanctions fines or imprisonment of a fine replacement for individual, non-structural and functional. The effectiveness of the criminal, still depends on many factors, therefore they are often disputed. When the theory of justice with dignity, or the theory of law state Pancasila should be used to address existing problems, then put forward the weakness of the criminal law, as stated above, is also intended that the use of criminal law in order to eradicate crimes observing the principles restrictions known in the state law.

The principles of barrier inside use of criminal code, including in this case a criminal fines or imprisonment in lieu of the criminal fine; namely: criminal code, should not be used for purely retaliatory. Narcotics Act, is a result of a rational policy, aimed at the prevention of drug dangers for mankind. Act narcotics are always associated with legal instruments in the field of criminal law enforcement, especially in efforts to prevent the illicit trade in narcotics.

Criminal Fines Policies And Imprisonment Criminal Fines Replacement According Judge Decisions

The court's ruling in a criminal case is essentially a document. Decision as a document contains a description of the indictment, which was made by the Public Prosecutor or the prosecutor after the previous investigation conducted by investigators; it at least according to the criminal justice system prevailing in Indonesia and refers to the general provisions contained in the Criminal Procedure Code.

The court ruling also describes a process of proving the case, either at the start of level inquiry and investigation, prosecution and trial in court. The court ruling that describes the process of evidence against the accused by a judge to prove that the defendant was proven or not according to the existing charges, will produce a verdict, which is listed as an injunction. In the ruling, there is a form of punishment decision, in this case determined what type of criminal and criminal past. In the ruling, it can also be included the possibility of a statement of acquittal for the defendant, or the decision free from any lawsuits.

Correlation The Disparity Of Criminal Sanctions With Narcotics Doer

The common understanding is known that a court decision in a criminal case containing the formal and substantive aspects (Dixon, 1995). Justice contained in a court decision, which according to the theory of justice with dignity is a manifestation has changed to the soul of nation (Honneth, 2004) or Volksgeist which has two dimensions, namely right as formally and fair as materially (Niezen, 2011). In other words, in describing the construction that the defendant has been legitimately proven and convincingly commit a criminal act. Therefore, the defendant guilty and sentenced to the type and severity of criminal depicting justice. The court ruling eligible material or formal as has been stated above is implemented by the prosecutor.

In fact, a court decision in the case narcotics containing dictum imposition of criminal penalties, it is generally difficult to be executed by prosecutors. The difficulty that occurs in case executing convicted itself, seize evidence, and take things which can be used instead paid the penalty specified in the judge's decision. Judges made a decision that detail inside injunction on execution conditions of imprisonment replacement for fines are based on the nature of independent judicial power. In making redaction court rulings in criminal narcotics, particularly in compiling redaction imposition of imprisonment in lieu of fines, the judge can make as clear as possible as long as not violating the Criminal Code and the internal regulations in Supreme Court.

In the criminal justice system of Indonesia, the implementation of various types of criminal sanctions specified in the Narcotics Act, which includes sanctions, such as criminal sanctions death, imprisonment, confinement, and criminal sanctions fines whose application is done cumulatively, including, sanctions to a concentration of research, namely the implementation of sanctions of imprisonment as an alternative to criminal penalties that have been regulated in the Law on Narcotics and run by judges.

An Overview Of Judges In Adjudicating Criminal Case Narcotics

Judge in prosecuting cases including criminal cases narcotics, through several stages to receive, examine and decide a criminal case based on principles of free, fair and impartial in the manner stipulated in the Criminal Code, which is check with based on evidence that is sufficient. The judge in this case although it must examine every evidence, analyze, and finally ruled on a case on the basis of law and justice.

Differences can occur due to the decision that there are different acts that are faced with the law and inequality in assessing the views of judges in a case that the same or equivalent. Difference in determining the criminal in practice is a result of the fact that the action to confront the criminal judge showed a difference and that among the judges themselves, there is a difference of views on an assessment of the data in case the same or comparable (Sherman, 1993).

The judges in imposing the decision is complex. Given criminal punishment against the convict judges certainly have a basic consideration, among others, should take notice of the principles of criminal punishment is viewed in terms of juridical principles of written or unwritten. Judge must take into account characteristics and seriousness of the offense/criminal offense committed and the circumstances surrounding deeds confronted him.

Generally criminal disparity can be interpreted as criminal punishment is not equal to the convicted in the same case or similar cases the level of crime, whether it is done jointly and without any justifiable basic. Disparities criminal who happens to have effect in especially for convicted, namely the loss of a sense of justice convicted. Criminal disparity would be fatal if correction associated with administration

(Ashworth and Horder, 2013). A convicted person who has compared the criminal sanctions inflicted upon him with criminal sanctions imposed on convicted person another but equally charged with formulation of the same article in Narcotics Act will feel victimized rather than what are called the judicial caprice or a change of mind appears in making important decisions.

In the criminal justice system, cannot be separated from an understanding of the laws and theories of evidence. The law of evidence is a provision governing evidence which justified laws. Conditions that should be used by the judge in order to refute the accused. Referred to verification is a process to demonstrate the truth of the proposition in this case the charges filed by the prosecutor to the hearing. Proposition meant it could be legitimate evidence.

Referred to evidentiary is a process to demonstrate the truth of the proposition in this case the charges filed by the prosecutor to the hearing. Proposition meant it could be legitimate evidence. Proof is a process to seek the truth through the formal and substantive legal evidence (Clermont and Sherwin, 2002). Before the accused is guilty or not guilty of anything against her, the evidentiary is important. Regulate evidentiary criminal procedure law and aims to find material truth.

Implementing A Policy For Doers In Narcotic Cases

Implementation of policies criminal fines and criminal penalties for doers substitute crime narcotics essentially been regulated in the Law on Narcotics. Article 148 of the Narcotics Act: if the decision of a fine as stipulated in this Law shall be paid by the perpetrator of narcotics and narcotics precursor criminal offense. Offender sentenced to a maximum imprisonment of two years in lieu of a criminal penalty that cannot be paid.

Based on research result shows that the implementation of the Narcotics Act in particular regarding the policy criminal fines and criminal substitute fines for doers in narcotic cases far have been implemented in all courts except the imposition of a maximum imprisonment of two years as a substitute for criminal fines cannot be paid has not been granted (Wahyuni and Bachtiar, 2015). Many considerations a judge in giving punishments meted out to convicted narcotics, and all of it must be adjusted to the level of mistakes made.

Based on result of research conducted showed that from entire amount of criminal assault narcotic none convicted who choose fined. it is obviously detrimental to the state materially because policies are expected to contribute revenue to the state criminal policy of the fine in lieu of imprisonment it is not running. Thus, this policy only contributed to making the country increasingly lose by releasing many detainees budget for consumption of narcotics cases that criminal penalties should be added prison with a prison sentence in lieu of a criminal penalty.

Implementation In The Judge's Decision In The Case Of Narcotics

Implementation of the policy of sanctions and criminal penalties of fines and imprisonment substitute criminal fine in the decisions of judges in cases involving offenders were charged with drug abuse in the criminal justice system in Indonesia. It is a common misconception that the disparity is a reflection of an independent judiciary in a constitutional state principle does not only happen in Indonesia but in all criminal justice systems existing in all countries of the world (Alston and Goodman, 2012). Issue of disparity is not a constraint and has no relation at all with policy implementation of criminal fines and imprisonment substitute fines for criminal narcotics under the Narcotics Act.

Convicts are doers in narcotic cases in reality has a tendency to choose the imprisonment as substitute for a criminal penalty because it is the dictate of the law. In other words, the choice of imprisonment rather than pay a fine that number is very high because it is the policy of a criminal or penal policy that has become law or defined in the Act.

Thereby, the suggestion found disparity in policy implementation criminal fine or imprisonment substitute fines made by the judge is the cause of the increasing number of narcotics abusers is an inference that deviate from normal. The judge dropped the criminal nature of an option for the convict to choose whether to pay a fine or imprisonment implement to substitute criminal penalties imposed on convicted because it is indeed a command Act so that the judge cannot be blamed in this case.

Judges in implementing the mandate of the Narcotics Act has gained not only a justification through the ratification of international conventions but also to obtain legitimacy in the written constitution of Indonesia. This research suggests that alternatives can be conducted in the application of criminal penalties against perpetrators of criminal offenses of narcotic that is using the opportunities that exist in the Article 197 letter (h) of the Criminal Procedure Code, which

include the decision sentencing a criminal prosecution or qualification details on action imposed.

Conclusion

Researchers found a substitute for policy implementation imprisonment criminal fine as a penal policy for convicted in the case of narcotic because it is a legal dictation. Therefore, even if there is a disparity in the length of term of imprisonment in various court decisions in the case of narcotics, but it is the implementation of imprisonment under the authority of judges who have freedom. Philosophically, that discretion is the independence of judges and legal basis. In addition, the implementation of policies such punishment it is the desire of lawmakers. In the perspective of the theory of justice with dignity, the desire legislator, it is the soul of the nation that manifest themselves in the Act, in that it can also be called public desires through the Narcotics Act.

Disparity is a discretionary authority that belongs to each judge hear the case, particularly in deciding the case. If there is an opinion that it has led to the weakening of principle that judges with discretion of authority to carry out a criminal prosecution policy formulation. Disparity is not a constraint, but reasonable discretion. Justice dignified owned judge. What's the harm if it is different, because each case has a peculiar, uniqueness, dignity, justice itself, cannot be equated a judge from one case to another judge to hear a similar case.

The results also indicated that criminal sanctions that policy criminal penalties such as fines or criminal penalties form of imprisonment a substitute for aims expediency. In the perspective of the theory of justice with dignity, or the theory of Pancasila state of law, either the authority nor the objective of sentencing discretion of judges is not stressed to retooling or ius talionis for narcotics abusers from countries representing community, but also a means to bring benefits; namely to protect human society and from the victims of drug abuse. It was a reflected the soul of Indonesia, or Volksgeist Indonesia, Pancasila which manifest themselves in the criminal justice system in Indonesia. Suggested to the society and the government to understand the implementation of substitute imprisonment criminal fine as a society wishes as stipulated in the Act and executed by the judges.

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