

The Implementation of Punishment Theories in the Verdict of Narcotics Case by Judge in Indonesia

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Abstract: This paper aims to find out the implementation of the theory of punishment in the judgment of narcotics crime cases by judges in Indonesia, since the verdict does not only contains the conclusions of the proven legal facts in the trial but also the theoretical justifications that can be justified by the judges on their verdicts. Method of approach used in this study was socio legal research with qualitative data analysis which involved a group of state court judges in charge of narcotics cases as the respondents. The research results are expected to give a complete picture of the implementation of punishment theory by judges in Indonesia in making the verdict of narcotics crime by implementing the theory of punishment related to the type of crime, the character of the crime, the motive of the perpetrator in order to make the qualified verdict which is able to give special preventive effects and general preventive effects. Further, punishment has a function to make the convict a good and useful person. When deciding the verdict of narcotics crime cases, a judge needs take a particular theory of punishment into account because the purpose of punishment is not only bringing benefits to society in general, but also benefitting the convict himself.

Keywords: Implementation, Theory of punishment, Narcotics crime, Judge

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I. Introduction

Law enforcement lies on aligning activities to values that are outlined in solid rules and embodied in the attitude as the final value to create, nurture, and sustain peace in social life. This view always manifests itself in certain values and is synchronized with a more concrete translation in the form of rule of law (Samekto, 2008).

In making a verdict, a judge must have a set of criteria underlying the verdict, whether the verdict he has imposed is right on the target, the first objective is to the defendant himself, i.e., whether

the verdict has satisfied the sense of justice for the defendant and his family, then whether it has been able to fulfill the sense of justice for the victims and their families and even a sense of community justice.

The struggle to hear a case for a judge is a very long inner struggle. Various feelings raged inside the judge's chest when dropping a verdict. Hate, anger, resentment and pity on the one hand faced with the provisions of normative legislation enforced, so it is very difficult to find the parameters or the size of what lies behind a judge in deciding against a defendant. The wise man once

said that justice can be corrupted by the money of the rich and the cries of the poor (Muhammad, 1988).

At a glance, people will think that the criminal problem is just a matter of judges. Indeed, if what we mean as a criminal punishment is only what is contained in Article 10 of the Criminal Code, then the decision of the punishment just concerns with the judge, but this is not entirely true, for example in the decision on imprisonment, the judge only determines the limits, while the detailed procedure of the punishment is established by the Correctional Institution which may also allow for the release of the convict on a conditional basis (Dewantara, 1987). The judge in the court of hearing examines carefully and then ultimately determines the appropriate punishment form for the perpetrator of a criminal offense; the judge is demanded to be judicious and alert (Mulyadi, 2012). A judge in the selection and determination of punishment for a particular offender must be able to see the psychological and social circumstances of the offender and if possible predict that with certain types of punishment, there will be attitude changes of the defendant after serving his punishment and later on become a better member of society (Muhammad, 1988). In relation to the issue of determining the punishment severity, it is necessary to consider the objective and subjective circumstances of the crime committed and the crimes and the criminals (Muhammad, 1988). Roeslan Saleh mentions that: Judging from the point of view of the defendant, the judge takes the place and the other role (Saleh, 1979). In principle the judge is seen by the defendant as someone who is at the top of the relationship between "me and them". In the tension between "me and them", the judge is the one who will decide, and the defendant assumes that the judge will give what he deserves. What did he think he was right for? Certainly punishment for his mistake. Very few defendants who acknowledge to commit a crime will also argue that he should not be convicted. Some defendants connect the severity of the crime acts to

the severity of the punishment. Some of them felt that the punishment was too much. As an excuse, it is often said that such crimes or, more importantly, in other instances have been sentenced to a less severe penalty. As the hypothesis which would explain the punishment which in his opinion is too severe is often mentioned: the social position of the defendant, personal views of the judge on certain crimes and the circumstances surrounding the time the crime committed, but there is also an opinion that the imprisonment is suitable.

The norms of a society's law are in fact depending on shared values or the collective appreciation (singebugen) of what is good, true and therefore worthy of achievement. The dogmatic legal science talks about the legal properties or the interests of law. The meaning is that the values, which the legislator wants to protect, both against the violation and the threat of danger (risk), by formulating a criminal provision (Remmeling, 2003). Another thing that the judge needs to consider in deciding the verdict is the use of the theory of punishment. The use of this punishment theory is important because the criminal sanction imposed by the judge, including the severity of the sanctions, based on which judicial theory used by the judge, is considered odd if the judgment is not based on the theory of punishment developed in criminal law. Of course the use of this theory of punishment depends on the type of crime, the characteristics of the crime, the perpetrators' motives, the circumstances of the judge, the judge's judgment on the crime committed, the religion of the judge, and so on. The use of punishment theory in judgment is also related to the quality of the judge's decision, one of which is to see how further the translation of the theories developed in criminal law relevant to the relevant crime, including how the judge constructs his verdict with the theory of punishment or without the theory at all. In other words, the judge's verdict not only contains the conclusions of the proven legal facts in the hearing. In addition, the use of punishment theory relates to the rights of the accused and the victim of the

crime. The defendant's mistake and the imposed criminal sanction cannot be based on the feelings of the judge alone. There must be a theoretical justification that the judge can justify his decision. Similarly, the victims of the crime must be considered, the rights they have, the loss suffered both physically and psychologically, and so forth. So it needs to be studied how the implementation of the theory of punishment in the verdict of Judges of Jepara District Court in narcotics case.

II. METHOD

The method used in this study is socio legal research, research specification is analytical descriptive, the respondent of this study are judges in charge of narcotics case, and the data was analyzed using qualitative method.

III. RESULTS AND DISCUSSION

1. Implementation of Theory of Punishment on The verdict of Narcotics Case in State Court of Jepara

Law Number 35 Year 2009 on Narcotics established on October 12, 2009 is a new provision that revoked the previous provisions of Act Number 22 Year 1997 on Narcotics. Various changes and new things that were not previously regulated in Act No. 22 of 1997 seem to be increasingly completed in Act Number 35 Year 2009. The enactment of new provisions concerns Narcotics aims to ensure the availability of narcotics for the sake of health and science, to prevent the misuse of narcotics and illicit drug trafficking.

The first World Conference on Narcotics and Psychotropic was held in Vienna Austria on 11 January-21 February 1970 by The United National Conference for the Adoption of Protocol and Psychotropic Substance and resulted in Convention Psychotropic Substances 1971. The contents of the convention are based on the resolution of The United Nations Economic and Social Council No. 1474 (XLVIII) dated March 24, 1970; the materials

are about rules to be agreed upon into international customs that must be obeyed by all countries, for the benefit of civilized nations.

Law enforcement lies in aligning activities to values that are outlined in solid rules and embodied in the attitude as the final value to create, nurture, and sustain peace in social life. This view always manifests itself in certain values and is synchronized with a more concrete translation in the form of rule of law (Soekanto, 1983).

According to Wayne Liavre, law enforcement is defined as a process that is essentially an application of discretion concerning decision-making that is not strictly regulated by the rule of law but has an element of personal judgment. Law enforcement officers on the one hand are in the capacity to apply the law but on the other hand do discretion in certain circumstances (Sunggono, 2006). These particular circumstances must be in order to achieve an actual justice. According to Sunaryati Hartono discretion is the basic attitude taken by law enforcement based on moral judgment that comes from the voice of conscience rather than legal considerations, for the sake of justice (Sunaryati, 1976). Therefore, the judicial institution as a place to hold the aspects mentioned above, does not only uphold the law itself as Oliver Wendell Holmes puts it, "the supreme court is not a court of justice, Law", but to uphold the law for justice (Mertokusumo, 1971). For the purpose of the mission, the judicial institution in any legal process should seek the truth that is not solely bound by strict procedures/rules, but also to judge which reflects humanitarian struggle to bring about justice (Sudirman, 2007).

With the enactment of Act Number 35 Year 2009 on Narcotics which supersedes Act Number 22 Year 1997 on Narcotics, the hope to lead to a state of society free from the dangers of narcotics rests on this Act. Act Number 35 Year 2009 on Narcotics Chapter XV regulates the criminal provisions which are divided into 48 Articles starting from Articles 111 up to Article 148. The types of crimes that are threatened against the perpetrators of crime are

minimum punishment namely 1 (one) year, 4 (four) Years and 5 years and a fine of at least Rp 800.000.000, - (eight hundred million rupiah). Except Section 127, 128, 134, 138, 142 which does not contain minimal punishment threats for both capital punishment and criminal sanction. The inclusion of minimal punishment threats against narcotics criminals (Act No. 22 of 1997 on Narcotics does not state the minimal threats) indicates that the government considers that the intensity of narcotics crime which is an extraordinary crime has increased both in quality and quantity so that a severe punishment threat is an attempt to make the deterrent effect of the perpetrator and preventively frighten the potential other party to be the perpetrator.

Determination of minimum punishment in the provisions of the Act Number 35 of 2009 shows the the principle of certainty, on the other hand, there is a difference between justice with the law applied. The territory of justice is not or not necessarily the same as the jurisdiction of positive law, so that the distance between law (Act) and justice is then termed with procedural justice on the one hand and substantive justice according to the law (Samekto, 2008). The problem that arises is how the application of if the criminal act the offender commits, fulfills all the elements of the article but his actions are simple or even the perpetrator is also included in the category as a victim and in a weak economic situation? And vice versa how the application of punishment if the juridical act of the perpetrator meets all the elements while his actions are organized and in a large capacity and endanger the community? The regulation of minimum weight of narcotics abused by perpetrators as mentioned in Articles 111, 112, 113, 114 as the basis for minimum and maximum punishment threats for victims and their families and even a sense of community justice. The struggle to hear a case for a judge is a very long inner struggle. Various feelings raged inside the judge's chest when making a verdict. Hate, anger, resentment and pity on the one hand faced with the normative legislation that must

be enforced, hence, it is very difficult to find the parameters or the size of what lies behind a judge in deciding against a defendant. The wise man once said that justice can be corrupted by the money of the rich and the cries of the poor (Muhammad, 1988).

At a glance, people will think that the criminal problem is just a matter of judges. Indeed, if what we mean as a criminal punishment is only what is contained in Article 10 of the Criminal Code, then the decision of the punishment just concerns with the judge, but this is not entirely true, for example in the decision on imprisonment, the judge only determines the limits, while the detailed procedure of the punishment is established by the Correctional Institution which may also allow for the release of the convict on a conditional basis (Muhammad, 1988). The judge in the court of hearing examines carefully and then ultimately determines the appropriate punishment form for the perpetrator of a criminal offense; the judge is demanded to be judicious and alert. A judge in the selection and determination of punishment for a particular offender must be able to see the psychological and social circumstances of the offender and if possible predict that with certain types of punishment, there will be attitude changes of the defendant after serving his punishment and later on become a better member of society (Muhammad, 1988). In relation to the issue of determining the punishment severity, it is necessary to consider the objective and subjective circumstances of the crime committed and the crimes and the criminals (Muhammad, 1988). Roeslan Saleh mentions that: Judging from the point of view of the defendant, the judge takes the place and the other roles (Saleh, 1979).

In principle the judge is seen by the defendant as someone who is at the top of the relationship between "me and them". In the tension between "me and them", the judge is the one who will decide, and the defendant assumes that the judge will give what he deserves. What did he think he was right for? Certainly punishment for his mistake. Very few defendants who acknowledge to commit a

crime will also argue that he should not be convicted. Some defendants connect the severity of the crime acts to the severity of the punishment. Some of them felt that the punishment was too much. As an excuse, it is often said that such crimes or, more importantly, in other instances have been sentenced to a less severe penalty. As the hypothesis which would explain the punishment which in his opinion is too severe is often mentioned: the social position of the defendant, personal views of the judge on certain crimes and the circumstances surrounding the time the crime committed, but there is also an opinion that the imprisonment is correct.

The norms of a society's law are in fact depend on shared values or the collective appreciation (singebugen) of what is good, true and therefore worthy of achievement. The dogmatic legal science talks about the legal properties or the interests of law. The meaning is that the values, which the legislator wants to protect, both against the violation and the threat of danger (risk), by formulating a criminal provision (Rommelink, 2003). Another thing that the judge needs to consider in deciding the verdict is the use of the theory of punishment. The use of this punishment theory is important because the criminal sanction imposed by the judge, including the severity of the sanctions, based on which judicial theory used by the judge, is considered odd if the judgment is not based on the theory of punishment developed in criminal law. Of course the use of this theory of punishment depends on the type of crime, the characteristics of the crime, the perpetrators' motives, the circumstances of the judge, the judge's judgment on the crime committed, the religion of the judge, and so on. The use of punishment theory in judgment is also related to the quality of the judge's decision, one of which is to see how further the translation of the theories developed in criminal law relevant to the relevant crime, including how the judge constructs his verdict with the theory of punishment or without the theory at all. In other

words, the judge's verdict not only contains the conclusions of the proven legal facts in the hearing. In addition, the use of punishment theory relates to the rights of the accused and the victim of the crime. The defendant's mistake and the imposed theory sanction cannot be based on the feelings of the judge alone. There must be a theoretical justification that the judge can justify his decision. Similarly, the victims of the crime must be considered, the rights they have, the loss suffered both physically and psychologically, and so forth. The punishment theory is used/adopted by the Court Judge to hear.

The interview with R. Heddy Bellyand, a Judge at Jepara District Court, shows that the level of narcotics abuse in Jepara region has increased from time to time due to the impact of the opening of Jepara area for the newcomers (Interview with RHB, a judge in the Jepara District Court. on 13 January 2015). According to Etik Purwaningsih, the factors that influence the increase of narcotics abuse are adolescent life style who follow the current trends, economic factors specifically the increase income, escaping from problems, the curiosity to try narcotics (interview with EP, a judge in the Jepara District Court. on 15 January 2015). The same thing was also expressed by Gandung, a Judge at the Jepara District Court, who stated that the factors that influence the abuse of narcotics in the Jepara region are social factors such as wrong association, economic factors such as profit temptation, and internal factors, for example the curiosity to use narcotics then he or she becomes addicted (Interview with G, a judge in the Jepara District Court. on 13 January 2015).

Suranto, SH., a Vice Chairman of Jepara District Court, stated that the number of narcotics abuse cases in Jepara District Court in 2011 is 26 cases; in 2012 there are 24 cases; in 2013 and 2014 there are 26 cases and 29 cases respectively (Interview with S, a judge in the Jepara District Court. on 13 January 2015).

Regarding the handling and settlement of narcotics cases that go to court, considering the case of

narcotics takes precedence, according to Kun Tri Haryanto, SH, a Judge at Jepara District Court, the narcotics cases were handled as soon as possible and the inspections were always conducted in coordination with the prosecutor in order for witnesses to give their testimonies and punishments were charged against the perpetrators immediately (Interview With KTH, a judge in the Jepara District Court. on 13 January 2015).

Based on the interview result of R. Heddy Bellyandi, a Judge at Jepara District Court, there has never been any rehabilitation decision so far, because the basis of the judge's final decision must have recommendation from the related institution that can show that there are victims of narcotics abuse that must be rehabilitated (Interview with HB, a judge in the Jepara District Court. on 13 January 2015). Most of the legal facts show that Public Prosecutor charged the case to the indictment of Article 114, 112 of Act Number 35 Year 2009 on Narcotics. And so far there has never been a drug rehabilitated perpetrators and rehabilitated drug addicts must refer to the provisions of the Act and the circular of the Supreme Court governing it.

According Suranto, the Vice Chairman of Jepara District Court, the criteria used by the judges in deciding the case of rehabilitated perpetrators are guided by the prevailing regulations, namely the Supreme Court Act No.04 of 2010, the Supreme Court Act No. 03 of 2011 and Regulation established by the Chief of the Supreme Court, Minister of Justice and Human Rights Affairs, Minister of Health, Minister of Social Affairs, the Attorney General, the head of the Indonesian National Police, National Narcotics Board of Indonesia of 2014. Regarding the submission to rehabilitation, it is the authority of the investigator, prosecutor or judge in accordance with the level of scrutiny, whereas during the inspection process rehabilitation costs were paid by the families but if the families does not have the means to pay the rehabilitation, it is supported by the government in government hospitals. If the verdict is permanently

enforced, the cost of social rehabilitation is charged to the Ministry of Social Affairs, while medical rehabilitation costs are charged to the Ministry of Health. Rehabilitation supervision is the responsibility of the institution that performs or conducts the social/medical rehabilitation.

Supervision after undergoing rehabilitation will be conducted by the Ministry of social affairs and the National Narcotics Agency (BNN) and it also involves the participation of the community and if there is a need to undergo rehabilitation, the criteria used by the judges to assign undergoing rehabilitation are abusers of narcotics in a state of dependency, the rehabilitation letter from doctors and there is cooperation from abusers to be free from narcotics.

The procedure for rehabilitation of narcotic addicts is after a decision from the District Court, then the narcotics addict is submitted to the local Rehabilitation Center. The one who submits is parents or family of the addicts. For those who bear the cost, if the Rehabilitation Center is state-owned, then the fee is free (paid state), but if the Rehabilitation is Private, then the cost must be paid by the client's family. Supervision is carried out by officers from the Rehabilitation Center and related officers and especially the supervision of the parents/relatives. The rehabilitation counted as time serving his sentence, pursuant to Article 103 paragraph (2) of Act Number 35 Year 2009 on Narcotics which states that the period of treatment and/or care for addicts Narcotics as referred to in paragraph (1) letter a calculated as the period serving a sentence.

2. The Punishment Theories Used by the Judge in Deciding Narcotics Cases

Based on the interview result of R. Heddy Bellyandi, a Judge at Jepara District Court, obtained information that the factors causing somebody to abuse narcotics are:

- a. Lack of information about the way to handle a victim of narcotics by rehabilitation center.

- b. Lack of socialization of ways of overcoming narcotic abuse victims.
- c. Law enforcement officers tend to choose repressive action rather than preventive action so that many narcotics abuse is better to handle alone than to report for rehabilitation.

Factors that cause a person to abuse narcotics and become addicted in Jepara started because of trial and error in their social environment in addressing the problems of life, then they choose to consume narcotics until finally they become addicted. The modus operandi of narcotics abuse in Jepara is by buying and selling through mobile phone, then narcotics were taken to the meeting point, the payment is fulfilled by transfer system and there is a small part who directly buy from the seller, most of the narcotics circulation is controlled by prisoners in Kedungpane Penitentiary; other modus operandi is usually sellers or intermediaries buying and selling narcotics by offering the goods to the potential victims or potential users, then potential users/ victims become interested and then buy or people who have/control over narcotics invite potential users/victims to use narcotics for free.

According to EP, a judge at Jepara District Court, the basic considerations used by judges in deciding narcotics cases are the existence of legal facts revealed in the trial which can be applied to the element of the article charged by the Prosecutor, the role of the defendant in the narcotics crime, intentions (*mensrea*) of the perpetrator in committing such crime and evidence submitted by the Public Prosecutor at the hearing related to the case of the defendant (Interview with EP, a judge in the Jepara Distric Court. on 15 January 2015). Based on the interview result of writer with Etik Purwaningsih, it is found that judge's consideration has paid attention to certain punishment theory in determining its decision. In giving a verdict, there is a consideration that the sentence handed down to the defendant really provides benefits and lessons to the defendant, so that with the imposed penalty,

it is expected that the defendant will be deterrent, not repeat his actions and the defendant can improve his behavior in the future.

The judge's consideration in deciding cases of narcotics crime is based on the facts revealed in court and in the imposition of criminal sanctions regarding the type and severity, the judge will consider the benefits/fairness and legal certainty for both the defendant, the public and the State, the reasons put forward by the judge in embracing a particular theory of punishment to decide the case of narcotics crime is that a punishment is intended in bringing benefits to the general public and also to bring benefits to the convict individually, and the reason the judge in applying a particular punishment theory in deciding cases of narcotics abuse is to benefit the defendant/ convict and at the same time provide a deterrent effect in order to not repeat in the future and warning for the community to not do the similar things. The theory of punishment that is usually embraced by the judge in deciding cases of narcotics crime, among others, is the theory of absolute/retributive theory, the theory of relative/ goals and the theory of combined/modern. One of the combined/modern theories is the combination theory that prioritizes or emphasizes the protection of public order.

In order to know that the judge in his decision has applied one of the theories of punishment in his decision, the following guidelines / parameters are provided for the theory of crime adopted by the judge as follows.

First, as an indicator that the judge in his decision has applied the theory of absolute punishment or retaliation is if (a) when punishment is sentenced because the offenders harmed the interests of others; (b) the criminal act primarily serves as payment of compensation (harm to harm). That is, the suffering that the perpetrator receives by conviction is the price to be paid for the suffering it inflicts to others through a crime; (c) The determination of the severity of criminal sanction is based on the principle of proportionality, that is, the gradation of the severity of the criminal sanction is

positively correlated with the gradation of the seriousness of the crime. The penalty imposed on a crime shall be appropriate to the harm caused by a criminal offense.

Second, as an indicator that the judge in deciding by using relative theory or objectives, is when (a) the legislator considers every human being a rational economic beings who always use the calculation of profit and loss in doing an act, including in committing a crime; (b) the purpose of punishment is to deter a convicted person from committing a crime of return (recidivism) and preventing the general public from doing the same; (c) determining the severity of criminal sanctions based on the principle that the punishment exceeded the gradations of seriousness of crime, means that the calculation of damages (penalties / suffering) obtained as a result of committing a crime outweigh the advantages (possessions or pleasure) derived from crime.

Third, as an indicator that the judges in their judgments apply a combined or modern punish theory is (a) if the offender is considered a sick person (physical or psychic) who needs treatment rather than punishment; (b) the purpose of punishment is to rehabilitate or remedy the perpetrator of the crime so that he will return to be a good member of society so as not to commit crimes in the future; (c) criminalization is based on the principle that punishment must be in accordance with the conditions of the convicted person. Determination of the severity of criminal sanction tends to the principle that the gradation of punishment is lighter than getting a punishment (suffering) that is lighter than the harm it inflicts to others through a crime.

Table 1 showed the 40 decision of Jepara District Court in the case of narcotics between 2011-2014.

Table 1. Punishment Theory Under Judge In deciding Narcotics Case in Jepara District Court 2011-2014

No	Year	Punishment Theory			Total
		Absolute	Relative	Combine	
1	2011	10	-	-	10
2	2012	7	3	-	10
3	2013	3	7	-	10
4	2014	5	5	-	10
	Total	25	15	-	40

Source: Data processed from Jepara District Court, 2015

Based on the above table, it can be seen that the theory of punishment adopted by judges in deciding the case of narcotics in Jepara District Court between the years 2011-2014. There were 25 cases using theory of absolute criminalization, and 15 of theory relative 15. As for the theory of combine criminal punishment, Jepara District Court has never used it in making decision. Thus, there were two theories used by Jepara District Court in making a decision, namely the theory of absolute punishment and the theory of relative punishment.

In the Jepara District Court, drug addict who should be rehabilitated is one who becomes victim of case abuse that has been filed with the Court. This case

is still checked/trial, which further the case will wait for the doctor's recommendation. If the doctor finds any drug abuse, this drug addict will be rehabilitated.

The obstacles that are often faced in the effort to overcome the abuse of narcotics is not able to do legal counseling to remote areas. Efforts are made to overcome the problem is to conduct legal counseling against parents who have teenagers to supervise their children so as not to fall into the circle of narcotics abuse. According Suranto, the obstacles encountered in efforts to address the abuse of drugs is sometimes crime that occurred outside the jurisdiction in which the evidence of the

narcotic crime is that they give rise to differences in interpretation of the powers of confiscation on the evidence so that the necessary coordination between the Court and Police in dealing with it in the hope that there is no difference in the implementation of applicable law, which in turn may lead to a situation that is not conducive in the handling of the prevention of narcotics abuse. The development of the use of the theory of punishment by the judge in deciding cases narcotic crime within the last 4 years is a judge in deciding the case in narcotic cases mostly uses the relative theory and using the theory of absolute / retaliation.

Efforts made by the judge in applying certain penal theory is to search for material truth in the case of the crime, the judge extracts the testimony of the witnesses, the defendant's statement and aligns it with the existing evidence so that with the facts found the law is known about the motive or purpose of the perpetrator In committing such crimes and known the role of the perpetrator, in practice relative theory or objectives are also applied in deciding cases of narcotics crime. However, regardless of the theory of criminal prosecution, judges cannot impose a lesser sentence than a minimum penalty (criminal sanction) and the judge cannot at his disposal impose a penalty higher than the maximum penalty sanction - invite. In applying judgment theory the judge must implement the decision so that it can be accepted by the perpetrator, the society and the state so that it can be realized the basic value of the law that is, the certainty, the benefit that leads to justice.

IV. CONCLUSION

Judge consideration has paid attention to certain penal theory in determining its decision. In giving a decision there is a consideration that the sentence handed down to the defendant really provides benefits and lessons to the defendant, so that with the imposed penalty is expected the defendant deterrent, not repeat his actions and the defendant can improve his behavior in the future better. The

reason given by the judge in embracing a particular theory of punishment to decide the case of narcotics crime is a punishment is intended in addition to bring benefits to the general public, which is important is expected to bring benefits to the person himself the convict itself. The theory of punishment that is usually embraced by judges in deciding cases of narcotics crime, among others, is the theory of absolute / retaliation theory, the theory of relative / goals and the theory of combined / modern. Based on the reasons the judge applied the theory of punishment in decision making for the narcotics case mentioned above, it can be concluded that the judge is more dominant in applying the absolute punishment theory in the narcotics decision on the grounds that according to the Judge the punishment is a reward that should be accepted by the offender has impaired the interests of others, in addition to the criminal act as payment of compensation, that is to say, the suffering obtained by the offender through punishment is the price to be paid for the suffering it inflicted on others through the crime and the determination of the severity of the criminal sanction based on the principle of proportionality, That is, the gradation of the severity of criminal sanction correlates positively with the gradation of the seriousness of the crime. The penalty imposed on a crime shall be appropriate to the harm caused by a criminal offense. The development of the use of punishment theory by judges in deciding cases of narcotics in the last 4 years is the judge in deciding cases of narcotic crime mostly using relative theory and not using absolute / revenge theory. Efforts made by the judge in applying certain penal theory is to search for material truth in the case of the crime, the judge extracts the testimony of the witnesses, the defendant's statement and aligns it with the existing evidence so that with the facts found the law is known about the motive or purpose of the perpetrator In committing such crime and known the role of the perpetrator, it is also considered about things that incriminate and lighten up for the defendant.

It is suggested that good coordination between the police, prosecutors, courts and BNN is needed to deal with the victims of abuse appropriately, and law enforcement officers put forward the preventive action rather than repressive measures, so that the rehabilitation program for the victims can be successful. Moreover, there is a need for socialization to the public about the dangers of drugs and how to overcome and abuse of narcotics.

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