

**A Execução Problemática Da Sanção Criminal Por Mínimas Mínimas No Constituição
De 1945 Número 35/2009 Relativa Aos Narcóticos (Região Legal Do Procurador
Distrital De Dharmasraya)**

**The Problematic Execution Of Criminal Sanction For Minimum Fines In The 1945
Constitution Number 35/2009 Concerning On Narcotics (Legal Region Of Dharmasraya
District Attorney)**

**La Ejecución Problemática De La Sanción Penal Por Multas Mínimas En La
Constitución De 1945 Número 35/2009 Sobre Narcóticos (Fiscalía Legal Del Distrito De
Dharmasraya)**

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Resumo

Esta pesquisa explicou sobre a execução problemática de sanções penais por multa mínima na Constituição de 1945, número 35/2009, relativa a narcóticos na região legal da Procuradoria Distrital de Dharmasraya e o esforço para superá-las com base na constituição número 35/2019, referente a narcóticos na região legal da Procuradoria Distrital de Dharmasraya. Esta pesquisa utilizou a teoria criminal e a aplicação da lei, o método usado aqui é a categoria de pesquisa empírica e a localização da pesquisa no procurador do distrito de Dharmasraya. O resultado desta pesquisa indica que todo o problema de preocupação criminal em narcóticos tratado pelo procurador do distrito de Dharmasraya, nenhuma das pessoas condenadas implementando a decisão do juiz de sanção criminal. A maioria dos condenados decide aplicar uma sanção na prisão como substituto do pagamento de multa em vez de pagar a multa em si. Existem dois fatores principais do motivo pelo qual a maioria dos condenados escolhe a decisão, a limitação econômica de todos os condenados e a possibilidade de todos os condenados sofrerem uma pena de prisão por um período muito curto e considerou melhor do

que pagar pena como punição. Ao implementar a decisão de punição penal, o advogado público não pôde fazer o máximo esforço para que os condenados obedecessem à pena de punição. O advogado público só pode solicitar a cobrança, no entanto, se os condenados não puderem pagar o dinheiro da punição, eles receberão uma carta de declaração de incapaz de pagar e de serem presos.

Palavras-chave: Sanções por multa mínima; Narcóticos; Promotor

Abstract

This research explained about problematic execution of criminal sanctions for minimum fine in 1945 constitution number 35/2009 concerning on narcotics in legal region of Dharmasraya District Attorney Office and the effort to overcome those problematic based on constitution number 35/2019 concerning in narcotics in legal region of Dharmasraya District Attorney Office. This research used criminal theory and law enforcement theory, the method used here is empirical research category and research location within Dharmasraya District Attorney. The result of this research indicates that the whole problem of criminal concern in narcotics which handled by Dharmasraya District Attorney, none of the convicted people implementing judge decision of criminal sanction. Most of the convicts choose to take a prison sanction as a substitute of paying penalty money rather than paying penalty money itself. There are two main factors of why most convicts choosing that decision, economic limitation of every convicts and the possibility of every convicts to take a prison punishment with a quite short period and it considered better than paying penalty as punishment. On its implementation of making criminal punishment decision, public attorney could not make a maximum effort to make convicts obeying the punishment penalty. Public attorney only able to asking for charge, however if the convicts cannot pay the punishment money, they will get a declaration letter of incapable to pay and being imprisoned.

Keywords: Sanctions for minimum fine; Narcotics; District Attorney

Resumen

Esta investigación explicó sobre la ejecución problemática de sanciones penales por multa mínima en la constitución número 19/2009 de 1945 sobre narcóticos en la región legal de la Oficina del Fiscal del Distrito de Dharmasraya y el esfuerzo para superar esas problemáticas basadas en la constitución número 35/2019 sobre narcóticos en la región legal de la Oficina del Fiscal del Distrito de Dharmasraya. Esta investigación utilizó la teoría criminal y la teoría de la aplicación de la ley, el método utilizado aquí es la categoría de investigación empírica y

la ubicación de la investigación dentro del Fiscal de Distrito de Dharmasraya. El resultado de esta investigación indica que todo el problema de preocupación criminal en narcóticos que manejó el Fiscal de Distrito de Dharmasraya, ninguna de las personas condenadas que implementan la decisión del juez de sanción penal. La mayoría de los condenados eligen tomar una sanción de prisión como un sustituto del pago del dinero de la multa en lugar de pagar el dinero de la multa en sí. Hay dos factores principales de por qué la mayoría de los condenados eligen esa decisión, la limitación económica de cada uno de los condenados y la posibilidad de que todos los condenados reciban una pena de prisión con un período bastante corto y se considera mejor que pagar la pena como castigo. En su implementación de tomar una decisión de castigo penal, el abogado público no pudo hacer un esfuerzo máximo para hacer que los condenados obedezcan la pena de castigo. El abogado público solo puede pedir cargos, sin embargo, si los convictos no pueden pagar el dinero del castigo, recibirán una carta de declaración de incapaz de pagar y ser encarcelados.

Palabras clave: Sanciones por multa mínima; narcóticos; fiscal de distrito

1. Introduction

Criminal Law contain of the sanctions over infraction of law, with a larger space and bigger impact. Criminal punishment within the book of criminal law code divided into main punishments consist of death punishment, prison punishment, rehabilitation essay, penalty payment and other additional punishment which consist of revocation of certain right, deprivation of personage and other by judge decision. In article 30, clauses 1 of Criminal law code there is a minimum amount of penalty payment, the amount of penalty payment at least twenty cent(Effendi, 2011). There is no maximum amount for penalty payment; it depends on which article being convicted, as what included in book II and book III of Criminal Law Code. If the punishment payment is not paid, convicts will get imprisoned(Remmelink, 2003). The imposition of penalty payment is not an easy decision, though it has a small amount, also penalty payment will make into general preventive.

In the development of law making, there are some rule of law which consist of certain minimal of criminal punishment inside 1945 Constitution number 35/2009 of narcotics. The existence of certain minimal punishment system can make a limitation toward the freedom of judge decision, even though practically, there is no certain rule of minimal punishment system. Within the system on minimal punishment inside Constitution number 35/2009 about narcotics, it expected to give heavy punishment for criminal subject. because nowadays, from year to another year, the number of criminal subject has increased, and one of the reasons is narcotics misuse rapidly increase, while the judge decision is quite light, it can be said that factor of giving punishment is not extending any effect for it criminal subject nor having *different effect* (Sujono & Daniel, 2013). Whereas, as people already know, narcotics makes bad impact for user, even the punishment for narcotics user can be quite endanger for country.

Article number 111 until 148 consists of death punishment; imprison punishment; rehabilitation essay and penalty punishment. Those categories of punishment formulated in

some kind of punishment but the most used punishment is the one within cumulative system between imprisonment punishment and penalty payment punishment. The imposition of payment punishment applied to every kind of narcotics user, with the penalty payment punishment minimum 400.000.000 (four hundred million rupiah's) and maximum 8 (eight) billion rupiah's (Saputra, 2014). For those category of criminal act with additional constituent, application of maximum penalty payment from each article should be added with 1/3 total amount of punishment. The application of imprisonment and penalty punishment according to Constitution consider as cumulative sentences, means those punishment served consecutively after one another (Siswanto, 2012). Moreover, the purpose of giving high amount of penalty payment is to make a deterrent effect for criminal subject.

The researcher's experience as prosecutor on executing judge decision that has obtained permanent legal force and it sentenced to a minimum criminal sanctions for narcotics misuse in Dharmasraya District Attorney from 2014 to 2017 never really been done, because most of convict did not able to pay high amount of penalty and they choose to make a Declaration letter of unable to fulfilling the amount of penalty payment (D-2). Criminal Subject replacing their penalty payment with prison punishment as the regulation of Article 48 of Constitution Number 35/2009 concerning on Narcotics with prison punishment maximum 2 (two) years.

Research Problem

From the explanation above, therefore the research problem is "what kind of execution problematic of criminal sanction special minimum inside Constitution 35 year 2009 about narcotics in legal region Dharmasraya State Prosecution?"

2. Research Method

1. Research Approach and Characteristic

a. Research Methodology Approach

For the approach, researcher used empirical research type is the type of approach within the understanding and learning a positive law system from research object and concerning on the real situation and practical condition in location . Therefore, researcher made a process of executional implementation of criminal sanctions for a minimum penalty in Constitution number 35/2009 about narcotics misuse that happen in Dharmasyara State Public Prosecution.

b. Research Characteristic

This research is a descriptive research which has a purpose to describe about certain thing at certain time (Waluyo, 2008). Usually researcher already has a concept of preliminary data about what kind of problem will be examined.

2. Population and Sample

a. Population

Population of this research contain of some inmate of narcotics misuse who is being punished within criminal minimum penalty based on the decision of Muaro District Court, Prosecutor of Dharmasraya District Attorney as the executor of court decision and the member of Muaro Sijunjung Correctional Institution.

b. Sample

Sample of this research is 5 (five) inmates who is being punished within criminal minimum penalty based on the decision of Muaro District Court, 3 (three) Prosecutors

of Dharmasraya District Attorney as the executor of court decision, and a staff of Muaro Sijunjung Correctional Institution.

3. Collection Data Technique

a. Document Study

This technique is done to gain secondary data which is data from research field. Document Study conducted to the recapitulation of report on the execution of minimum penalty toward the inmate of criminal narcotics misuse in Dharmasraya District Attorney from 2014 until 2017.

b. Interview

Interview source of this research is a mixture of a half question from research and half open answer from respondents. Respondent of this research come from inmates, prosecutor and the staff of correctional institution.

c. Data Sources

1) Primary Data obtained directly from Data source (respondent) in research field or from the observation result, and then being observed by researcher. To conduct this primary data, needs an empirical law research to provide the validity of concept, theory and theses.

2) Secondary Data

The purpose of this secondary data as:

a) Primary Legal Material:

Primary Legal Material is a binding legal material (Sunggono, 2010). Legal material that used in this research is:

- i. Indonesian Criminal Law Book
- ii. Constitution Number 8/1981 concerning on Criminal Law Procedure
- iii. Constitution number 16/2004 concerning on Indonesian State Prosecution
- iv. Constitution number 35/2009 concerning on narcotics
- v. Constitution number 48/2009 concerning on Judicial Power.
- vi. The regulation of Indonesian Attorney General Number: PER-036/A/JA/09/2011 of Standard Operational Procedures (SOP) on Handling General Criminal Cases of 21 September 2011

b) Secondary Legal Material

Secondary legal material contains explanation of primary material (Sunggono, 2010). This is not restricted material. However, explaining primary legal material which is not include as the result of processed opinion or the expert thinking that concern in certain field in particular and usually will give an instruction of what research is the researcher directed to. Secondary legal material can be books, theories or opinion from academic bachelor, observation result and scientific works of law community within percentage data as qualitative analysis.

3. Result and Discussion

Problematic Execution of Criminal Sanction for Minimum Fines In Narcotics.

On narcotics criminality, there is a criminal decision outside the criminal law with a high nominal. Prison punishment is applied for all category of narcotics criminal act, with minimal penalty payment around 400 million rupiahs and maximal payment of 8 (eight) billion rupiahs. Thus, writer researcher needs to provide the detail of criminal act and narcotics criminal category based on its category on Constitution 35/2009 concerning on narcotics (narcotics).

Table 1

The detail of Criminal act and Criminal category inside Constitution Number 35/2009

Criminal Act Criminal Category	Category I	Category II	Category III	Category IV
Imprisonment of Narcotics Criminal Act Category. I	4-12 years 5-20 years	4-12 years 2-20 years	5-15 years 5-20 years	5-15 years 5-20 years
Narcotics Criminal Act Category. II	X	3-10 years 5-15 years	2-12 years 5-20 years	4-12 years 5-15 years
Narcotics Criminal Act Category. III	X	2-7 years 5-20 years	3-10 years 5-15 years	3-10 years 5-15 years
Lifetime Imprisonment/Death Punishment of. Narcotics Criminal Act category I	owning narcotics more than a kilograms/5 trees	More than 5 grams	Causing other people death/permanent disability	Causing other people death/permanent disability
Narcotics Criminal Act category II	X	x	More than 5 grams	x
Narcotics Criminal Act category II	X	x	x	x
1	2	3	4	5
Penalty Payment of Narcotics Criminal Act category III	Penalty Payment 800 M – 8 B	Penalty Payment 800 M - 8 B Penalty Payment Max + 1/3	Penalty Payment 1 B – 10 B Penalty Payment Max + 1/3	Penalty Payment 1 B – 10 B Penalty Payment Max + 1/3
Narcotics Criminal Act category III	X	Penalty Payment	Penalty Payment	Penalty Payment

		600 M - 5 B Penalty Payment Max + 1/3	800 M – 8 B Penalty Payment Max + 1/3	800 M – 6 B
Narcotics Criminal Act category III	X	Penalty Payment 400 M - 3 B Penalty Payment Max + 1/3	Penalty Payment 600 M – 5 B Penalty Payment Max + 1/3	Penalty Payment 600 M – 5 B Penalty Payment Max + 1/3

For the details of criminal narcotics category with additional constituent, the maximum amount of punishment from each article should be added with 1/3 total punishment. The application of imprisonment and penalty punishment according to Constitution consider as cumulative sentences, means those punishment served consecutively after one another. Under the application of those punishments, all the criminal subject of narcotics misuse and illicit narcotics trafficking will not have any alternative on determining prison punishment or penalty payment punishment, and this is a new system on new development of criminal justice (Lestari & Wahyuningsih, 2017).

Based on those explanations, there are some highlighted main points. One of it is the explanation of increasing punishment for Criminal Subject of Illicit Trafficking, The increasement of criminal punishment not only applied for prison punishment but also for penalty payment. Not only the increasement of prison punishment period, but also minimum amount of each article of penalty payment (Zulfa & Adji, 2011).

Table 2

The details of Prison Punishment and Payment Punishment of narcotics-uses crime Category I (Zulfa & Adji, 2011)

Article of Criminal	Article 111	Article 112	Article 113	Article 114	Article 115	Article 116
Prison Punishment	4 - 12 5 - 20	4 - 12 5 - 20	5 - 15 5 - 20	5 - 20 6 - 20	4 - 12 5 - 20	5 - 15 5 - 20
Payment Punishment	800 M – 8 B Penalty Payment Max + 1/3	800 M – 8 B Penalty Payment Max + 1/3	1 M – 8 B Penalty Payment Max + 1/3	1 B – 8 B Penalty Payment Max + 1/3	800 M – 8 B Penalty Payment Max + 1/3	1 B – 8 B Penalty Payment Max + 1/3

Lifetime Punishment	-	-	Plant weight More than a kg/ 5 trees	Plant weight More than a kg/ 5 trees Non Plant 5 grams	Plant weight More than a kg/ 5 trees Non Plant 5 grams	Causing other people death/ permanent disability
Death Punishment	-	-	Tanaman lebih 1 Kg/ lebih 5 btg	Tanaman lebih 1 Kg/ lebih 5 btg Non Tanaman 5 gr	-	Causing other people death/permane nt disability

Table 3 below explains about criminal punishment system of narcotics misuse and Illicit narcotics trafficking category II. It is regulated based on article number 117-121 of Constitution number 35/2009. There are four categories in the system of giving punishment for narcotics criminality category II, minimum imprisonment for 3 (three) years to maximum 20 years.

Table 3

The detail of Imprisonment and Penalty Payment for narcotics-uses crime category II (Zulfa & Adji, 2011)

Article of Criminal	Article 117	Article 118	Article 119	Article 120	Article 121
Imprisonment	3 - 10 5 - 15	4 - 12 5 - 20	4 - 12 5 - 20	3 - 10 5 - 15	4 - 12 5 - 20
Penalty Payment	600 M – 5 B Penalty Payment Max + 1/3	800 M – 8 B Penalty Payment Max + 1/3	800 M – 8 B Penalty Payment Max + 1/3	600 M – 5 B Penalty Payment Max + 1/3	800 M – 8 B Penalty Payment Max + 1/3
Lifetime	-	-	Weight more	-	Causing

Punishment			than 5 grams		other people death/ permanent dissability
Death Punishment	-	-	Weight more than 5 grams	-	Causing other people death/ permanent dissability

Minimum amount of payment punishment is 600 million rupiahs and maximum 8 (eight) billion rupiahs. Lifetime punishment and death punishment or imprisoned for 5-20 years for narcotics criminality category II if the weight minimum 5 grams, and giving a narcotics for other people which cause a death and permanent disability. The formulation of punishment in Constitution Number 35/2009 is a total different formulation of the determination inside Constitution number 22/1997, which the latest version implementing minimum amount of narcotics is 5 grams, even though this regulation is not systemic yet.

Category III

Regulation for narcotics criminality is under article 122 to 126 of Constitution number 35/2009. On it system of giving punishment for narcotics criminality category III there are 2 (two) categories, minimum 2 (two) years imprisonment and maximum 15 years imprisonment and Penalty payment minimum 400 million rupiahs and maximum 5 billion rupiahs. Lifetime punishment and death punishment or 5-20 years of imprisonment is not occurred in narcotics crime category III (Narindrani, 2017).

Paying fine or penalty payment as punishment on Constitution about Narcotics regulating in some clauses related to Illicit Traffic (Article 111, 112, 113,114,115,117,118,119,120,122,123,124,125,129,132,137 and Article 147), clauses related to narcotics misuse for other people whether they already adult or under age regulated in (Article 116, 121,126,133), clauses of certain criminal subject for witnesses who knows about an illicit trafficking but not informing it to the law authorities regulated in (Article 131 and Article 134), clauses regarding fulfillment of administration requirements on circulation and trafficking of narcotics regulated in (article 135 and 139), and the clauses of criminal law regarding implementation of procedural law which is not being implemented by subject of law regulated in (Article 138,140,141,142, and 143). Different from law number 22/1997 which regulating penalty payment as punishment to narcotics user, law number 35/2009 is not regulating certain payment punishment for narcotics user. That new regulation is a concrete form of rehabilitative purpose for narcotics user as what written inside article 4 clause d in Constitution of narcotics (Narindrani, 2017)

The difficulty of implementing execution on penalty payment also can be found in legal region of Dharmasraya District Prosecution. This is the detail of implementation on execution of criminal sanction minimum fines toward the convicts of narcotics misuse from 2014 to 2017:

On 2014, there are 3 cases of narcotics misuse which decided in legal region of Dharmasraya District Attorney. The amount of minimum penalty is around 800 million to 1 billion rupiahs. From those 3 cases, prosecution always faces difficulties on executing that particular amount of minimum penalty payment toward the entire convict. Because most of convict unable to comply the amount of payment.

While on 2015, there are three cases of narcotics-related crime which being verdicted in legal region of Dharmasraya District Attorney with minimum amount of penalty payment from 800 million to 1 billion rupiahs based on what written in Constitution. The same matter also happen on 2015, which most of convicts unable to pay their penalty punishment. The details as following table below:

In 2016, the amount of cases for narcotics criminality has increase to 16 (sixteen) cases, and the same matter happens, which some of convict unable to pay those amount of special minimum fine of penalty payment.

While on 2017, there are 9 cases of narcotics criminality that decided by courts in legal region of Dharmasraya District Attorney and still left the same problems. Most of convicts did not able to pay those criminal minimum of penalty payment.

Based on the data above, it can be seen the amount of penalty payment from criminal subject is around 80 million rupiahs until 1 billion rupiahs. Besides, the entire inmates from 2014 to 2017 in legal region of Dharmasraya District Attorney are from a person who has no ability of paying the penalty payment. If they are not paying the penalty payment, according to the judge decision they have to be imprisoned for maximal 2 (two) years as what inside Constitution article 148.

There are some problems on executing the penalty payment of particular minimum amount in legal region of Dharmasraya District Attorney:

a. Economical Factor of convicts (Criminal Subject)

The entire judge acknowledges that economical condition of people considers as low and it is affected the empathy feeling of judge decision. Those consider as a main obstacles of every judges to decide the payment punishment. Low economical condition totally affected penalty payment progress. According to Constitution concerning in narcotics (mostly narcotics), there is a regulation of paying penalty punishment, even with a high punishment. However, when the judges feel empathy for criminal subject and having an economical consideration for convicts, the amount of punishment will be reduced to a lower number. Therefore, the solution for narcotics and narcotics related crimes, remembering that most of narcotics user comes from the lower economical condition, imprisonment is the main criminal sanction, while penalty payment becoming their supporting sanction. Furthermore, another problem faces by judges on deciding the penalty payment as punishment is Constitution did not have a certain regulation of penalty payment. Regarding the sense of justice which considered as an obstacle in applying criminal fines payment, it means that penalty payment is not considered as giving a deterrent effect for convicts, therefore what is

familiar for common people is narcotics user should be punished by prison punishment. The implementation of this criminality punishment is not only giving punishment for disgraceful attitude, immoral and making disadvantage for other people, but it has to pay attention on some point as what Sudarto stated about main focus on giving punishment as below (Sudarto, 1981):

- 1) The purpose of criminal law, the punishment decision has to be the effort of realizing prosperous society based on Pancasila (Indonesia National Principle) and has to be neutral. It is try to stimulate or try to prevent. This is for people prosperity and community services.
- 2) The application of unrequired action which is an action that can cause any disadvantages for certain people. Disadvantages means there are any direct victims such as murder victims or indirect victims such as environment pollution.
- 3) The comparison between the facility and the result, which is a necessary on considering the spending cost and they will get a result based on expectation.

According to the interview result from researcher toward three narcotics convicts, Hendri Pgl Eri, Tomi Adi Marjohan Pgl Tomi dan Riski Amaldi Pgl Riski, which is the three of them, having a punishment in correctional institution Class IIB Muaro Sijunjung? The result of that interview indicates that the main reason of their inability to pay their penalty payment is that their low condition of economic and they did not have enough money to pay the fine. Economic factor is the biggest factor and the main factor that obstruct them to pay an amount of minimum fine. The amount of minimum fine they need to pay is quite large and they occurs an insufficient condition of their economic situation.

b. Replacement Punishment is too short

Economical factor is not the only factor for criminal subject of narcotics or narcotics chooses to not paying their penalty payment. According to the explanation of three narcotics convicts, even though the consequences of not paying the penalty payment is an addition of prison period for the criminal subject in correctional institution for a few months, but that additional period consider as lighter punishment rather than paying penalty payment because they occur an economic limitations. And even though they have more money to pay, they will not choose to pay the penalty payment because they consider the replacement punishment is easier.

Another interesting point on the implementation of penalty payment for narcotics criminality based on Constitution of narcotics is the mechanism on deciding the replacement of penalty payment. When the judges deciding their decision of giving penalty payment as punishment, but it is getting substitute with prison punishment as replacement. Regarding that decision, the conversion from penalty payment to imprisoned as punishment did not applied based on certain system but directly informed to the convicts of narcotics. After the verdict decided, narcotics convict have a possibility to choose between having a penalty payment or being imprisoned as replacement. there is no system to decide whether the convict has the right to replace their punishment. The same as the implementation of penalty payment

itself, there is no certain system to force the convict of narcotics to obey their penalty payment as punishment. Therefore, most of convict choose to get imprisoned as their replacement for penalty payment.

On its implementation of giving a penalty payment as punishment, the general prosecutor could not have maximum effort. This is because the explained obstacle as what explained before, thus, the effort of prosecutor simply the effort of demanding a charge from criminal subject and if they are unable to pay they gave Declaration letter of unable to fulfilling the amount of penalty payment and they will get imprisoned for replacement.

The small period of imprisonment as replacement is the hardest obstacle for penalty payment implementation, based on the opinion of the effectivity on penalty payment, if the payment is being fulfilled by criminal subject. If the criminal subject already being verdicted by judges but they are not paying the amount of penalty payment, it is considered as ineffectiveness of penalty payment. The amount of penalty payment not being fulfilled by criminal subject because they are facing low economical condition and the replacement punishment is easier. The interview result explained that "it is related to economical principle, does during 1-4 months of imprisonment outside the correctional institution the convict could provide the amount of penalty payment? If not then better for them to stay inside prison rather than paying high amount of money"¹.

There are reasons for short period of imprisonment as replacement inside the implementation of penalty payment. The high amount of penalty payment inside the Criminal law did not attach an imprisonment as replacement, therefore for the decision of prison punishment as replacement inside the book of criminal law article 30 clause (1) indicated that the minimum for a day and maximum for six months. Constitution have no regulation of penalty payment is other obstacle faces by judges. Judges stated that for certain cases, such as negligence which cause a death of other people (article 359 of criminal law), getting hurt or growing any disease (article 360 of Criminal law). Actually, there are particular people who could not get a prison punishment, if prison punishment consider as too heavy and did not meet the purpose of giving punishment. For that kind of cases, the right punishment is penalty payment. But unfortunately that kind of regulation did not verdicted inside general Constitution, and they could not have that as punishment.

The implementation of minimum fines consider as giving much of advantages and justice senses as what explained by Sutherland and Cressey (Sudjono, 1974)

- 1) Compare to other punishment, penalty payment is considered as easier to be done and can be revised if there occur a mistake.

¹ Interview with Fuad Ar Rahim, Special Prosecutor on Dharmasraya District Attorney, 12 April 2019. 13.18 GMT

- 2) Penalty payment is the type of punishment that giving an advantage for government because government does not need to pay some amount if there is no subsidiary disadvantages.
- 3) Penalty payment did not bring any harm for convict reputation and honor as what happen on other punishments.
- 4) Penalty payment Pidana denda help to relieve the world of humanity
- 5) Penalty Payment will be income for the region / city.

Unregulated of penalty payment punishment inside the violation article did not make a penalty payment can not be fulfilled. Thus, should be a main consideration on giving punishment as. If a particular punishment such as imprisonment consider does not meet the purpose of giving punishment for certain cases, while the regulated article only stated for prison punishment, it does not mean that only occur an imprisonment, but the convict could be verdicted for other punishment such as penalty payment, if penalty payment consider as fulfilling the purpose of giving punishment.

c. Execution period time is too short

In relation with the period of paying fine where the judges did not have authority on deciding the deadline date on paying the penalty payment based on their economical ability of the convicts inside their judgments. Therefore, practically prosecutor as the executor stick to the regulation of article 270 Jo Article 273 clause (1) and (2) Indonesian Criminal Law books which is with a period of a month and could be extended for another month. And that decision does not give an authority for prosecutor to postpone the payment date. Besides, based on the regulation of the latest Criminal Law, there are no systems of paying process in penalty payment.

4. Conclusion

In every cases of narcotics crime which handled by Dharmasraya District Attorney, none of the inmates carrying out a penalty payment that decide by the judge. Most of inmates chooses to getting imprisoned (prison punishment) to replace their penalty payment. It happened because of two main factors which is bad economic condition of inmates and there is possibility for inmates to get a shorter period in prison which consider as better than paying penalty money.

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