



PROGRESSIVE LAW IMPLEMENTATION IN FALL ADDITIONAL CRIMINAL ON ITE CRIMINAL ACTIONS

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Abstract:

The imperfection of the rule of law gives Judges the room to make legal discoveries (*rechtvinding*) and to form laws (judge made law) through their decisions by exploring the values that live in society as required by the provisions of Article 5 paragraph (1) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. This research aims to assess whether the Decision of Pandeglang District Court Number 71/ Pid.Sus /2023/PN Pdl which imposes additional punishment of deprivation of certain rights can be called a progressive character decision. The method used in this research is normative juridical with statute approach and case approach. The results of this research show that the judge has expanded the punishment for ITE criminal offenses by imposing additional punishment in addition to the main punishment, which is actually unknown in the ITE Law regime, so that the decision can be called to have a progressive legal characters .

Keywords: information and electronic transactions, progressive law and criminal offenses

INTRODUCTION

Development knowledge rapid knowledge and technology has bring impact to level civilization carrying man _ something change big in form patterns and behavior society . Progress knowledge very fast knowledge the including in the field telecommunications , information , and computers . Moreover with happening convergence between telecommunications , information , and computers . From phenomena convergence that , moment this is what people call it as revolution technology information.

Increasingly digital era develop fast , use technology information and transactions electronic has become part not inseparable from life human . However , developments it also unlocks door for action criminals in cyberspace, such as deployment information fake , data hacking and action harm others who can own impact Serious to individuals , society and institutions . For anticipate problem the so be formed Constitution Number 19 of 2016 concerning Information and Transactions Electronics (UU ITE).

Civilization wave the third now start clear shape . Civilization This be marked with progress technology communication and information (data processing). The resulting impact from civilization the is current information in life man modern No Possible Again can limited . Trend Keep going development technology

naturally bring various the implications must be quick anticipated and watched out for . Although has arranged UU ITE, will but the ITE Law does not can solve and reach whole problem law . So that For fill in the emptiness and weaknesses of the ITE Law , in practice Justice open opportunity for the Judge to do invention law (*rechtvinding*). One method that can used by Judges is use approach law progressive .

Progressive law is phenomenal ideas addressed to apparatus enforcer law especially to the Judge so that Don't shackled with positivism lasting law This Lots give injustice to yustisiaben (searcher justice) in enforce law Because enforcement law is series of processes for describe enough values , ideas, ideals abstract becoming objective law .

One case concrete in use technology information is case distribution of pornographic videos (*revenge porn*) that confiscates attention public is case Number 71/Pid.Sus/2023/PN Pdl on Name The defendant AHM was tried at the Pandeglang District Court . *Revenge porn* the started from deed The defendant AHM recorded it activity the sex together with IS victims. Defendant Then send loaded video recording immoral the through his social media accounts to other people's social media accounts , as embodiment the threats to the victim if No fulfil request from Defendant , and p the has going on a number of



time ever . Until Finally deed Defendant known by the families of IS victims and friends of IS victims and IS victims reported Defendant until Finally Defendant stated proven guilty do follow criminal how Decision Number 71/Pid. Sus/2023/PN Pdl .

Based on Decision Pandeglang District Court Number 71/Pid.Sus/2023/PN Pdl The Panel of Judges dropped decision to Defendant AHM with amar decision state The defendant AHM was proven in a manner valid and convincing guilty do follow criminal with intentionally and without right distribute information electronics and documents electronics that have load violate decency , as in indictment alternative first Public Prosecutor , and therefore drop criminal prison for 6 (six) years and criminal fine in the amount of IDR 1,000,000,000.00 (one billion rupiah) with provision if fine the No paid , will replaced with criminal confinement for 3 (three) months and dropped criminal addition to Defendant form repeal right For use or utilise device communication electronic internet- based for 8 (eight) years , starting valid on the day decision This can executed .

Decision Pandeglang District Court Number 71/Pid.Sus/2023/PN Pdl interesting For studied dikaraakan beside dropping criminal principally , the Panel of Judges inside amar the verdict was also handed down criminal addition that is repeal rights certain form repeal right Defendant For use or utilise device communication electronic internet- based for 8 (eight) years which is criminal addition the No known in the ITE Law regime .

Panel of Judges in case the consider the act carried out defendant own such an impact bad , done in a manner repeated or not exists regret for yourself The defendant because of the motive for the action defendant is retribution feud to victim self. As form anticipation abuse tool communication For conflicting goals _ with law by the Defendant later day and perpetrator follow criminal others , necessary given witnesses and maximum punishment . So that dropping penalty addition the become effect deterrent for perpetrator in a manner special and become education or prevention for public in a manner general so you can exploit and use tool communications and the internet with wise and correct . If used approach law progressive , then Panel of Judges in case the has bypassing the ITE Law for more benefits big .

Interesting stuff inside dropping criminal addition Decision Pandeglang District Court Number 71/Pid.Sus/2023/PN Pdl is because it is in the ITE Law itself No arranged exists dropping criminal addition . So that with thereby when No There is arrangement nature of punishment specifically in the ITE Law, the judge should go back to settings nature of punishment general , namely those regulated within provisions of the Criminal Code, in particular provision Article 10 letter b

of the Criminal Code regarding types criminal additionally, includes repeal a number of right certain , usurpation goods particulars and announcements judge's decision . Special criminal addition form plunder right certain Alone in a manner limitative has mentioned the shape as provision Article 35 paragraph (1) of the Criminal Code.

METHOD

Research methods used in study This is juridical normative with use a number of approach problem form approach legislation and approach case .

RESULTS AND DISCUSSION

Legal theory progressive in the world of Indonesian law popularized by Satjipto Rahardjo. Satjipto Rahardjo has progressive view to law Because He believe that law must Keep going grow and adapt to changes social , economic , and political events that occur in society . Therefore law must involve participation active from public in the manufacturing process , and should own more role active from the judge inside advance law .

By simple , legal progressive can interpreted as law always undergoing a developmental process as form from freedom in effort do search truth , of One truth going to another truth . Idea law progressive This background concern that law Still shackled thoughts and views positivism that's the exact law obstruct in reach objective from enforcement law That alone .

In view Satjipto Rahardjo, law must progressive , that is progress , keep going updated and adjusted with needs and aspirations society so they can more effective in operate function as tool For realize justice and prosperity for society . In draft law progressive , law That relies on aspects morality from human , or in context This is aspect morality from enforcers law .

Characteristics from law progressive Satjipto Rahardjo as following :

1. The law refuses tradition *analytical jurisprudence* or *rechtsdogmatiek* and share understand or Genre like *legal realism*, *freirechtlehre* , *sociological jurisprudence*, *interressenjursprudenz* in Germany, theory law nature , and *critical legal studies* ;
2. The law refuses opinion that order (*order*) only Work through institutions statehood ;
3. Progressive law addressed For protect the people towards to the legal ideal ;
4. The law rejects the status-quo, as well No want to make law as technology that doesn't conscience . but something moral institutions ;
5. Law is something purposeful institution deliver man to a just , prosperous and creative life man happy ;
6. Progressive law are , " pro-people law " and " pro



- justice law ";
7. Assumption base law progressive is that " law is For human " no otherwise . Related with matter that , then law No There is For himself yourself , but rather For something more wider and more big . So every time there is problem in and with law , it is the law that is reviewed and improved as well as No forced man For entered to in system law ;
 8. Law is not is something an absolute and final institution but it really depends on how man see and use it . Humans are determiner ;
 9. Always legal is at in the process for Keep going to be (*law as a process, law in the making*);

Progressive law put position deep man study This is enforcer law in position central and most important in the enforcement process law , where a enforcer law must capable combine between values law positive or normative with side humanity or behavior social Where law That applied , so in enforcement law the capable see problematic justice - oriented humanity substantive .

Legal theory progressive demand law must characteristic adaptive and responsive so that can Keep going adapt self with development and change social , economic , and political events that occur in society so that law truly can become tool For realize justice and welfare for society .

Progressive law is against from law conservative , where in framework think law conservative , law and justice only enabled as tool prevent happening decline values and morals, meanwhile on the contrary law progressive precisely make law and justice is as tool or means do change social .

Good law progressive nor conventional , both You're welcome accept and know application invention legal , however meaning invention law from second view the law above is very different . Conventional law looking application invention the law carried out by the judge is just a judge stabilize that Constitution can applied to the event , then the judge applies it according to sound law . Judge only become funnel from law .

On the contrary in law progressive , discovery law relies on aspects mark law That self , truth , justice , ethics as well as morality so that resulting law _ capable become solution , form mark as well as engineer various form from change social inside _ public going to to more direction _ good .

Progressive law looking objective the main law is happy or realize happiness for society , which Bernard L Tanya conveyed that law progressive is favorable law _ to justice and the people , where in carry out enforcement law every apparatus sued honesty as well as sincerity and must capable build empathy nor concern for the suffering felt public Because well-being public is objective end from maintenance law .

If linked with application method invention laws carried out by judges paradigm law progressive , then progressive judge's decision own characteristic as following :

1. Judge's verdict no characteristic legalistic pure or only just as funnel law , though in dropping the verdict indeed a judge stick to the rules law ;
2. The judge's decision was no limited only For reach orderly , but also capable push improvements inside _ public as well as build harmonious relationship between fellow member society ;
3. The judge's decision is visionary, has range view to forward , be brave do breakthrough law as well as when face to face with situation Where existing regulations precisely contradictory with propriety , decency and order or values that live in society , the judge does not hesitate to do so action *contra legem* or take conflicting decisions with legislation to achieve true truth and justice;

A judge 's decision said characteristic progressive when through decision That a brave judge For do something breakthrough law that with matter the the law he enforces can give justice in accordance with what is expected by society (*bringing justice to the people*).

Legal theory progressive Satjipto Rahardjo stated law can functioned as tool for public If connected with its application by the judge through dropping the verdict , is lies in thinking and acting progressive that exempts judges from shackles text document law , because in the end law That No text law , but rather For happiness and prosperity human . this _ in line with principle that when the judges meet with situation Where No There is rule law , or rule the law is not clear , then the judge must dig the values that live within public For find law or decide the matter at hand to him .

The same principle applies , however something rule the law has clear However contradictory with values that live in society , in theory law progressive give freedom or freedom for the judge to apply most appropriate law he thought although contradictory with framework law positive already there is .

In context the role of judges, Satjipto Rahardjo also believes that the judge must own freedom For make appropriate decision with developments and changes that occur in society . The judge must own freedom For make appropriate decision with applicable law , without bound by provisions that are not relevant or No in accordance with developments and changes that occur in society .

Progressive law always hook between factor law , humanity and morality , deep context role an internal judge implementation the task , to be factors that



greatly influence and are depicted from content the decision he handed down .

Furthermore, Ahmad Rifai stated in connection position of judge with theory fiction the judge's law is considered know will the law (*ius cur +ia novit*), then For evaluate is something the judge's decision will be is something progressive decision _ is with see How method or judge 's view the verdict will be where did he drop it ? characteristic decision nuanced progressive is when the judge wants go out from text standard chapter Constitution or even do action *contra legem* .

Satjipto Rahardjo stated that Spirit in law progressive is liberation , fine in the sense of liberation to type , method thinking , principles , theories that last This used nor liberation to culture enforcer implemented laws during this and felt become inhibitor for law in finish problem .

Two things above give description that is very important *rule breaking* in system enforcement law , because I hope the judge is brave go out from patterns standard that has been done during this , for example disconnect only based on existing articles _ is inside _ provision Constitution only .

In implementation law progressive by the judge through the verdict , then a judge demanded For capable think in a manner open and must be try look for as well as find truth substantive , as well No only constrained by rules nature law normative mere . With Thus , the judge must able and brave do something breakthrough through invention source law _ from dig values that grow , live and are recognized within society .

Opportunity For do breakthrough through invention law This Alone Actually Already provided basically , that is with guided by Article 5 paragraph (1) of the Law Number 48 of 2009 concerning Power Judiciary which reads : "Judges and constitutional judges must explore , follow , and understand values law and a living sense of justice in society ". Explanation from chapter the emphasized that the judge's decision was appropriate with law and a sense of justice society , and justice in question Of course is justice substantial .

Related with law and values that grow in society , Bagir Manan argued good law _ is appropriate laws with living law _ in society (*the living law*) of course accordingly or _ is reflection from valid values in society (*social justice*) .

Importance the role of the judge through the decision he passed , because the judge had role in complete rules law written at the time apply it in something real events , and existence emptiness law If of course happen must capable addressed by the Judge through effort invention law so that No happen situation No resolved something case with reason No There is rule the law .

Condition thereby demand that the Judge can think in a manner progressive For find solution law To use close gap rule existing laws _ with drop containing decision _ justice substantive or not just fixated on mere formal rules .

Related with dropping crime inside judge's decision , the Criminal Code recognizes and groups criminal to into two groups , namely criminal principal and criminal additional (*vide* Article 10 of the Criminal Code). Criminal tree is possible punishment handed down by the judge through its decision and nature imperative based on law , includes criminal death , criminal prison , criminal imprisonment , criminal fine as well as criminal cover . Whereas criminal addition is the sentence imposed by the judge as complementary or adder from criminal dropped tree _ before and is choice , in the sense that the judge can choose For drop or No drop criminal addition besides criminal tree that has dropped before . This also means , criminal addition No can dropped in a manner alone , but must together with dropping criminal principal .

Provision dropping criminal additions and their types it 's inside Article 10 of the Criminal Code includes repeal rights certain , usurpation goods certain , and announcements judge's decision , third scope the outlined more continue inside _ provision Article 35 to Article 43 of the Criminal Code.

Although This ITE Law Already experience one time change since promulgated in 2008 , but inside the changes the as intended in Constitution Republic of Indonesia Number 19 of 2016, related imposition penalty criminal for perpetrator follow criminal ITE still No regulated and known exists criminal addition as intended in Article 10 letter b of the Criminal Code , so for perpetrator follow stated ITE crime guilty through judge's decision only sentenced criminal tree as intended in Article 10 letter a of the Criminal Code .

Frequent problems found is criminal offenses that have been still listed in the ITE Law self - oriented defendant , and less notice victim aspect as well impact more wide to society . punishment Still emphasize just on effort judgment on error defendant in action the crime he committed , however Not yet touch aspect protection more society in .

As example , a person perpetrator or convict follow the ITE Law is still criminal possible own access to internet network that can it uses For do follow criminal similar or retribution more Far to the victim. Neither did the victim fully safe only Because perpetrator Already imprisoned . On the other hand , society not enough feel something possible decision _ impact on increasing awareness law For more responsible answer inside _ utilization technology information . In the context of the ITE Law, then criminal addition appear as element important in guard justice and security in digital environment .



Criminal drop added together with criminal tree to perpetrator follow criminal ITE has objective specifically, that is give effect way to perpetrator action criminal as well as push prevention action similar in the future. Criminal the said addition among others are form deprivation right specific property of the offender follow criminal in life in cyberspace. Like a fish, cyberspace is where water perpetrator follow criminal live and move, then with dry water source or keep him away from cyber activity, impact psychological feeling perpetrator follow criminal will more feels.

On the other hand, there are more victims awake from possibility retaliation and society will too more be careful in activities in cyberspace remember risk possible punishment worn. this Because realized or no, utilization technology information For follow criminal like blackmail, information fake, spread content pornography and so on is very possible impact length and breadth, no only to individual but also groups affected communities. There is a fall criminal addition like plunder right access or other rights through the ITE Law will give chance for victims and society For make an effort he got more justice perfect or rehabilitate his reputation was tarnished consequence deed perpetrator follow ITE crime.

The development of today's digital era is increasing complex demands that it be improved internal effectiveness enforcement law. Perpetrator follow criminal ITE is not only limited those who have background behind education low or medium does follow criminal more Because factor incomprehension, however follow crime in cyberspace is also common involve the perpetrator has level knowledge yag tall as well as own ability inside hide or at least disguise their digital footprint so that the more difficult For reachable law. Dropping criminal tree like prison, confinement or fine No Again felt enough and still possible perpetrator do action similar later day.

There is a fall criminal addition like deprivation right certain, will impact emergence awareness to perpetrator when follow ITE crimes are not will tolerable and sure can raises consequence directly on the rights he has, namely utilization technology and information. Drop criminal addition will can give addition effect more deterrent strong than criminal tree only, so reduce possibility repetition follow criminal similar later day.

Although dropping criminal addition own impact positive For push follow ITE criminal, however absence arrangement about dropping criminal addition on follow the criminal law regulated in the ITE Law becomes problem that the judges are aware of the decision he passed. There's something emptiness discovered law in implementation of the ITE Law, especially in dropping penalty criminal, where if at all then the judge wanted to drop criminal meaningful addition is return to authority general (*lex generalis*) as arranged inside

provision Article 10 of the Criminal Code, still There is Another obstacle is type criminal which addition is appropriate dropped in follow criminal law on ITE.

If you refer to the discussion above, then criminal the most relevant additions inside follow criminal law on ITE is deprivation right certain, however thereby revocation of certain rights It has been regulated in a limited manner in the provisions of Article 35 paragraph (1) of the Criminal Code, that the rights that can be revoked are:

1. The right to hold all specified positions or positions;
2. Right of access to armed power (Army);
3. The right to vote and may be elected in elections conducted according to General law;
4. The right to be an Advisor or Trustee (trustee recognized as legal by the State), to be a guardian, supervisory guardian, to be a curator or supervisory curator over someone other than his own child;
5. Father's power, guardianship and guardianship (*curatele* over one's own child);
6. The right to perform specified work;

In context practice Justice specifically punishment use provisions of the ITE Law in Indonesia, decision Panel of Judges at Pandeglang District Court in case Number 71/Pid.Sus/2023/PN Pdl is something something new, where the courts are generally inside ITE matters only drop criminal tree just without There is criminal addition especially related ones with activity information and telecommunications Defendant. On the decision so, whether decision the own characteristics law progressive or no?

There is a number criteria used by experts law To use evaluate is something judgment handed down by a judge or the panel of judges own characteristics law progressive. Decision character progressive must be capable combine between values law positive with condition social Where law That implemented. In addition, the verdict progressive imposed by the judge must be capable see and overcome problematic social emerging humanity with orientation main is the fulfillment of a sense of justice and its realization happiness society.

Decision Progressive too characteristic adaptive so that No stiff and capable in a manner flexible adapt self with developments in the existing social, economic, political era, with thereby characterful decision progressive can do something manipulation social leading to further development and change good. Likewise, other characteristics of the decision are characterful progressive is it contains the judge's courage through the verdict For do breakthrough law for the sake of presenting justice to public through the verdict. In context This can understandable, the judge's courage did breakthrough law is with brave go out from text standard legislation,



even do action *contra legem* .

From the description above , then For evaluate is decision dropping crime outside _ indictment own characteristics law progressive , then will assessed based on criteria sparked by Ahmad Rivai , as following :

1. The judge's decision was no characteristic legalistic pure or only just as funnel the law , though in dropping the verdict indeed a permanent judge stick to the rules law ;
2. The judge's decision was no limited only For reach orderly , but also capable push improvements inside _ public as well as build harmonious relationship between _ _ fellow member society ;
3. The judge's decision is visionary, has range view to forward , be brave do breakthrough law as well as when face to face with situation Where existing regulations _ precisely contradictory with decency , decency and order or values that live in society .

Interesting For test application law progressive it 's inside Decision Pandeglang District Court in case Number 71/Pid.Sus/2023/PN Pdl with use criteria above , as _ _ following :

1. The judge's decision was no characteristic legalistic pure or only just as funnel the law , though in dropping the verdict indeed a permanent judge stick to the rules Constitution

Based on Decision Pandeglang District Court in case Number 71/Pid.Sus/2023/PN Pdl The Court of Justice remains base inspection case The defendant AHM on the letter the charges filed by the Public Prosecutor with amar decision Defendant proven do follow criminal as indictment alternative first that is deed Defendant violate provision Article 45 paragraph (1) *in conjunction with* Article 27 paragraph (1) of the ITE Law . because _ That The Panel of Judges dropped criminal to Defendant because _ matter the .

Sentence imposed _ to Defendant No only criminal tree form criminal prison and fines following confinement replacement in accordance with threat the penalties contained therein _ chapter indictment , but also the Panel of Judges apparently join in drop criminal addition form deprivation right certain , ie revocation of the defendant's rights to use or exploit internet-based electronic communication devices during time certain .

If connected with provision criminal penalties regulated therein _ ITE Law, then Decision Number 71/Pid.Sus/2023/PN Pdl as *Judex Facti* No Again fully in line with provision legislation , because has drop punishment criminal addition in the same shape very new Because No arranged in

the ITE Law. Although on one side of course There is the judge's authority is based on provision Article 10 of the Criminal Code, but on the other hand against type criminal plunder dropped rights _ The panel of judges is the same very different with type criminal plunder that right _ limitative has mentioned inside _ provision Article 35 of the Criminal Code.

Along with development civilization and technology , patterns thinking Genre positivism looking law _ law in a narrow sense that is only according to the provisions contained therein the law and must separated with moral values that are alive and accepted within public start changed with appearance streams as well as theories law new more _ promote a sense of justice rather than certainty law . One _ development the can We Look from How Judge's independence for can judge something case with the Judge must pay attention living values _ in public although No There is law norms governing it .

Draft base in disconnect case , Judge indeed must referring to applicable laws , will _ but in context development Indonesian law and society at the time This , Judge is not Again just funnel law . The judge is funnel propriety , justice , interests public and order general . In context here is the formula the Judge must pay attention living values _ in public must implemented through the verdicts .

Based on Article 5 paragraph (1) of the Law Republic of Indonesia Number 48 of 2009 concerning Power Judiciary involved _ become part from base law consideration in Decision Number 71/Pid.Sus/2023/PN Pdl which has mention provisions " pay attention living values _ in society " where matter That intended to ensure that the Judge's decision is appropriate with law and a sense of justice society , which is one of them with method *judicial activism* , that is role the activeness of the judge in use method invention law and interpretation law For answer issues law deep concrete _ law positive Not yet arranged or has There is the rules but Already No can applied Again in the present , so through consideration legally , the judge can give values justice and protection to right principle man as adage law "*Law is not justice. Law Just a tool to get there*", that law no justice , law only means or tool For reach justice .

Anyway, it's done appropriately every perpetrator follow criminal and has proven from facts law obtained _ from tools proof nor goods evidence found _ For still sentenced criminal , however criminal the must balanced with level wrong he did , so with thereby side justice and expediency are not ignore certainty law , anyway



can materialized . Drop ignoring crime _ the facts are revealed and are just for the sake of it fulfil content letter indictment course , on one side will put a judge or assembly only as craftsman stamp indictment or funnel Constitution only , though Already the judge should be funnel justice , which with The verdict is society can obtain justice as well as feel satisfied on verdict handed down .

2. The judge's decision was no limited only For reach orderly , but also capable push improvements inside _ public

Based on Decision Number 71/Pid.Sus/2023/PN Pdl which is inside his considerations confirm that dropping criminal additions that don't known in UU ITE as well not even shape including in types deprivation right according to the Criminal Code. Decision Number 71/Pid.Sus/2023/PN Pdl which is one he warned drop criminal addition form deprivation right certain , ie revocation of the defendant's rights to use or utilize internet-based electronic communication devices during time certain . Amar verdict the is results from activity judicial (*judicial activism*) with consider necessity effect more deterrence _ for self Defendant based on the motive of the action and the impact it causes , as well as learning (education) for the person public For more responsible answer in use device telecommunications and social media , so don't until abuse it so that harm self yourself , especially other people.

Dropping criminal in law criminal of course No Again just dimension retribution on mistakes made _ perpetrator , however Already shift also with notice aspect education , fine for perpetrator nor public To use avoid repeat deed similar . More from that's , dropping criminal is form real the judge's efforts in presenting justice especially for victims, without ignore justice for the defendant and also the community . because _ that's very important for the Judge in determine type and weight appropriate punishment _ so that objective punishment can materialized .

Initially , criminal addition Possible more characteristic repressive and neglectful context technology . However , along development law and understanding will importance protection right basic individual in digital environment , criminal additional also experienced evolution going to more approach _ proportional .

Drop break addition form deprivation right certain in form restrictions or prohibition defendant access or use device communications and electronics as Decision Number 71/Pid.Sus/2023/PN Pdl , is one of them possible effort _ taken For increase effect wary for si lost

offender _ chance For channel his penchant for the world of technology , but also will encourage , awaken as well as remind public in a manner more wide For be careful and wise in use technology Because exists consequence from every deeds , and in the end also improve effort fulfillment satisfaction will feel fair and safe specifically for victims who suffer consequence deed defendant . So that decision the reflect orderly and also capable push repair for self Defendant and society .

3. The judge's decision is visionary, has range view to front

Drop punishment criminal addition in application criminal law on ITE no The same very intended as form ignore right basic human , deep matter This is defendant . Dropping punishment criminal addition must interpreted as effort protection right basic man That itself , that is , so that each individual who owns ability in the field of ITE no use ability they For something that harms other people. So that Already appropriate given emphasis necessity criminal addition the .

By psychological , punishment the heaviest felt by someone , about or regarding with what he likes . If a perpetrator follow criminal worn penalty crime that hindered him in do something he likes , then matter That Far more No comfortable felt so that effect deterrence and education expected will more effective . As example , a person convict corruption No will too worry convicted prison time certain Because Still There is possibility subtraction sentence (remission) up to liberation conditionally possible _ enjoy it , however a convict corruption Far more worry If treasure his wealth confiscated and impoverished , like separating the fish from the water.

Based on Decision Number 71/Pid.Sus/2023/PN Pdl can known motive of the defendant AHM as revealed at trial no appear so course , but born from experience long the relationship that is built with IS victims. Disappointment and pain heart Finally push Defendant For do follow criminal dissemination of immoral videos To use humiliate the victim and tie him up so the victim will always follow will Defendant . Ability A capable defendant utilise technology information Because background his education as student major technique , too support implementation intention Defendant .

The same logic applies for a fan technology that does follow criminal , whatever criminal plunder independence (prison) imposed to her No become such a problem heavy , long His hobby is in the field technology Still can distributed . Moreover , threats criminal actually in the ITE Law No too high .



For anticipate abuse tool communication For conflicting goals _ with law by the Defendant especially and perpetrators follow criminal other so that for users who abuse it For conflicting interests _ with rules / laws need given witness and maximum sentence _ so that dropping penalty the become effect wary for perpetrator in a manner special and be education or prevention for public in a manner common to get exploit and use tool communication and the internet with wise and true . For that is , the fall criminal extra you can make it difficult perpetrator follow related ITE crimes with technology become important .

The old ITE Law as well the changes Still Not yet accommodate dropping criminal addition , so if the judge wants drop criminal addition , must return refer to provisions in the Criminal Code. However Thus , punishment additions to the Criminal Code , especially those deemed most relevant For limit motion from convicts of the ITE Law, namely plunder rights certain problems are also encountered with limited in a manner limitative type or forms from plunder right that , where No none from forms plunder right according to the appropriate Criminal Code or relevant with the ITE Law.

Criminal Code is legacy born colonial _ far away and not will Possible Can chase lagging behind with progress over time this . With So , revision or renewal return in ITE Law by institution legislature (DPR) and institutions executive (Government), absolute required so that can reach imposition criminal relevant , effective and efficient additions . _ Unfortunately , the revision process regulation legislation not a short and simple process , but rather requires a complicated and long process . On the other hand , use technology following the possibilities misuse too fast For can reachable by law written product from institution legislature .

For fill in emptiness such , at point here's the judge got do effort For fill in emptiness law in punishment perpetrator follow criminal law on ITE in particular in dropping criminal addition . Judge is living law , or judge is _ law That alone . As explanation from the role of the judge is not Again just funnel law , then the judge must able and brave play role more that is with form law (*judge made law*) use answer problem laws that appear in society and have not accommodated by law written in legislation , especially deep sense of justice _ the context of the ITE Law, still tend accused - oriented , and lacking protect the interests of such victims for example , how If si perpetrator or defendant Still keep copy document charged electronics _ violate decency However No

follow confiscated or also other social media accounts that are still can used For spread return infringing content _ decency ? It is very possible happen especially For cases based on revenge motives revenge and hatred .

As part from effort realize justice in a manner thorough with without ignore aspect education and prevention in the future , then dropping criminal addition For perpetrator follow The ITE Law has criminal penalties base Logical thinking , though _ law criminal positive that regulates it Not yet available . Demands development pattern communication in society is also the same easy viralize something without care principle prudence , even reject do clarification also has great potential harm the party that went viral . The jargon " *no viral no justice* " seems to be become justification that For ensure justice is must with viral pathway , without care If matter the violate principle propriety and prudence .

Dropping decision criminal addition in follow This ITE crime can be done become pusher discussion or debates scientific laws _ To use realization improvement of the ITE Law yourself in the future .

Decision Number 71/Pid.Sus/2023/PN Pdl above _ _ has fulfil criteria from character judgment _ progressive . Decision rendered _ No just fulfil obligation legislation , however more from That show effort real from the Judge inside take as well as drop fair and acceptable decision _ satisfying public as well as impact more positive _ far , esp for perpetrator as well as victims of acts criminal . The judge didn't only just follow provision Constitution mere , however brave take step real with drop criminal additions that don't regulated in the ITE Law, in fact in same shape _ very different with types criminal addition repeal right certain inside _ provisions of the Criminal Code, because the verdict passed in accordance fact law as well as own effect more wide , will more capable give justice and satisfaction society , so benefit enforcement law will can felt .

There is connection tightly between *judicial activism* and law progressive that is, on focus both of them to adaptation and development law . The running judge *judicial activism* can apply principle law progressive through interpretation law in matter rules that don't clear , or formation law when No exists rule required law _ For presenting justice through the verdict to development public as well as progress increasingly technology _ fast . Through *judicial activism*, the judge can produce more verdict _ accommodate development society and technology , all at once reflect values law positive progress . _

Although thereby harmonization *judicial*



activism and principles fixed law _ fair , consistent and sustainable still must maintained , because *judicial activism* carried out without solid foundation _ can raises consequence negative like uncertainty law or abuse judge's power . Merger *judicial activism* with law progressive for the judge inside the verdict is very important For still consider limitations existing laws _ To use ensure that resulting changes _ later truly fulfil objective justice and certainty law , and accordingly with ambition law desired progressive , ie _ happy or realize happiness for society , as stated by Bernard L Tanya, that law progressive is impartial law _ to justice and the people , where in carry out enforcement law every apparatus sued honesty as well as sincerity and must capable build empathy nor concern for the suffering felt public Because well-being public is objective end from maintenance law .

Of course dropping criminal addition to the action ITE criminal as Decision Number 71/Pid.Sus/2023/PN Pdl Still possible opportunity corrected or even annulled by judgment more courts _ high , however at least matter This can awaken how importance effort increase supervision and protection for society for more responsible answer in utilise technology , all at once push party legislature so that it can formulate revision of the ITE Law that can accommodate dropping criminal addition for perpetrator follow crimes in the field of ITE, remembering potency violation exploiting privacy _ technology and devices electronic as well as culminate in action crime is very open For done by anyone .

Judicial activism as steps taken _ through Decision Number 71/Pid.Sus/2023/PN Pdl form dropping criminal addition in follow crimes in the field of ITE in form plunder right For use device communications and electronics internet- based , although on one side No arranged inside _ provision criminal law in the ITE Law itself and on the other hand neither including in forms plunder right certain provisions regulated in the Criminal Code, can assessed as effort real implementation mandate Constitution Number 8 of 2009 concerning Power Justice , esp Article 5 paragraph (1) requires judges to explore a living sense of justice in society and present it within the decisions he handed down .

Judicial activism by judges already should form at birth judge's decision in nature progressive , that is when through decision That a brave judge For do something breakthrough law that with matter the the law he enforces can give justice in accordance with what is expected by society (*bringing justice to the people*).

Dropping the only verdict just adapt with sound Constitution just However ignore aspect justice and expediency , no Again relevant with role noble judge as a must breaker Act with put forward justice and no Again just oriented enforcement content chapter from

Constitution only , however ignore the condition of the victim as well expediency more wide from the verdict he handed down to society Where decision That implemented . The judge's decision is over duly dropped No only For edify law positive only , but also should be present For fix , even build more laws _ good and fair in the future , because of course law That only will felt the benefits if inside _ enforcement is chase as much Possible values justice .

CONCLUSION

Drop decision with criminal addition that is repeal rights certain form repeal right Defendant For No use or utilise device communication electronic internet-based for 8 (eight) years as as Decision Number 71/Pid.Sus/2023/PN Pdl No known in the ITE Law regime and not is types available rights _ revoked according to provision Article 10 letter b Jo. 35 paragraph (1) of the Criminal Code. With thus , criminal addition that is repeal rights certain in Decision Number 71/Pid.Sus/2023/PN Pdl can assessed as form from *Judicial activism* that gave birth decision with character law progressive , leave from thinking as well as awareness that law only is means reach justice , and it is not justice That alone . Drop criminal tree just in ITE matters still seen Not yet Enough deter perpetrator . Thinking thereby join in pushed the judge inside do something new and breakthrough _ penalty punishment according to the applicable ITE Law regime , in particular form dropping decision addition plunder right to defendant . Purpose of dropping decision will more wide impact No only become lessons and lessons for defendant , education for public For always use ITE facilities and infrastructure with full not quite enough answer .

Decision Pandeglang District Court Number 71/Pid.Sus/2023/PN Pdl can made as pusher discussions scientific regarding as well as push study comprehensive For more refinement of the ITE Law well in the future . For ensure certainty the law , yes the ITE Law should include criminal a real addition own effect more education _ strong , no only for perpetrator follow criminal but also society , and on the other hand it is also oriented more to protection victim 's right in a manner morale nor material .

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