

LEGAL PROTECTION OF CHILDREN AS PERPETRATORS OF CRIMINAL ACTS OF NARCOTICS ABUSE FROM THE PERSPECTIVE OF LAW NO. 35 OF 2009 CONCERNING NARCOTICS AND LAW NO. 11 OF 2012 CONCERNING THE CRIMINAL JUSTICE SYSTEM FOR CHILDREN

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ABSTRACT

Narcotics abuse by children is currently a concern of many people and is continuously discussed and published. The problem in this is how the law regulates children as perpetrators of narcotics crimes, how is legal protection for children who commit narcotics crimes related to Law No. 35 of 2009 concerning Narcotics and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, what are the obstacles in law enforcement against children as perpetrators of criminal acts of narcotics abuse. Based on the results of the study, it is understood that the police constraint in law enforcement against children as perpetrators of narcotics abuse is the lack of awareness of the general public about their role in efforts to prevent and eradicate narcotics abuse by children.

INTRODUCTION

The ongoing process of social change in Indonesia also marks the development of cities with their complex functions which no longer only have administrative and commercial functions, but also grow as nodes of social interaction that influence the value systems and norms as well as the behavior of citizens.

The National Youth Anti-Drug presented the results of their research which stated that children who use drugs are not only forced by friends or dealers/sellers to use drugs, but other reasons are to try to escape boredom/saturation, to feel good, forget problems and relax, to have fun, satisfy curiosity, reduce feelings of hurt/disappointment, try challenges, to

feel mature, show independence, feel like a member of a certain group, so that...Looking cool is the reason they use to use drugs. Initially, students who use drugs usually begin by being introduced to cigarettes. Because smoking seems to have become a normal habit among students today, this habit continues to increase, especially when students join groups of people who are already addicted to drugs.

The existence of drugs and narcotic substances in Indonesia itself had begun to be known before 1927, this was evident from the policy made by the Dutch East Indies government by issuing Staatblad 1927 No. 278 jo No. 536, namely regulations on drugs and opium. In the early 1970s, drug abuse became increasingly uncontrollable so that on September 8, 1971, the President issued Instruction No. 6 of 1971 which in essence was to eradicate juvenile delinquency, drug abuse, smuggling, subversive counterfeit money, and surveillance of foreigners.

Specifically, narcotics abuse was considered urgent enough to encourage the birth of Law No. 9 of 1976, which was later refined by Law No. 22 of 1997 concerning Narcotics. The government assessed that Law No. 22 of 1997 was no longer effective in preventing narcotics crimes which were increasing quantitatively and qualitatively, as well as the form of organized crime, so Law No. 22 of 1997 was revised again with the enactment of Law No. 35 of 2009 concerning narcotics on December 14, 2009.

This term is now very familiar to the public. Various news reports, appeals, and warnings regarding drugs are frequently published. Cases of drug distribution and abuse are currently increasingly prevalent in Indonesia. Indonesia has now become a major marketing destination. Due to the rapid development of drug distribution, many cases of drug crimes have emerged in society, almost all of which affect teenagers. According to research by the National Narcotics Agency (BNN), the University of

Indonesia (UI) Health Research Center (Puslitkes), and various leading state universities, the prevalence of drug abuse in 2008 was 1.75 percent of the Indonesian population. This prevalence rose to 1.99 percent of the population in 2011. Three years later, the figure had reached 2.2 percent. By 2015, the figure is projected to reach 2.8 percent, equivalent to 5.8 million people.

Drug crimes are no longer committed in secret, but are often carried out openly by users and dealers in their operations. Numerous facts presented by news reporters, both in print and electronic media, reveal that these illicit drugs have spread everywhere indiscriminately, especially among teenagers, who are expected to be the next generation in building the nation in the future.

RESEARCH METHODS

Research methodology is research that presents the methods or procedures or steps that must be taken in a study systematically and logically so that its truth can be accounted for.

Legal research is essentially divided into two types: normative research and empirical research. Normative research utilizes secondary data, and is therefore also called library research. Empirical research refers to direct community research, either through questionnaires or direct interviews.

This research is descriptive analysis, that is, research that describes, examines, explains, and analyzes laws and regulations related to the objectives of this research. The purpose of descriptive research is to accurately describe the characteristics of individuals, conditions, symptoms, or certain groups, or to determine the frequency or distribution of a symptom or the frequency of certain relationships between symptoms and other symptoms in society. The main purpose of analyzing legal materials is to understand the meaning contained in the terms used in the

statutory regulations conceptually, as well as to understand their application in practice and legal decisions.

Viewed from the perspective of the method used, this research can be classified as a sociological (empirical) type of legal research, namely as an effort to see the influence of the implementation of positive law on the lives of the community, because in this research the author directly conducted research at the location or place being studied in order to provide a complete and clear picture of the problem being studied. In addition, in sociological legal research, the correlation between law and society is seen, so it is able to reveal the effectiveness of the implementation of law in society.

RESULTS AND DISCUSSION

Children in conflict with the law is an international term used for children suspected, accused, or convicted of a legal offence. Children in conflict with the law are categorized as requiring special protection. No child may be deprived of their liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child must be in accordance with the law and used only as a measure of last resort and for the shortest and most appropriate period.

Various national regulations define children in conflict with the law in several ways. The Juvenile Court Law calls them "delinquent children," while the Child Protection Law calls them "children in conflict with the law" and "children in conflict with the law." Regardless of the term, the most important thing is that everything related to children must be done with the child's best interests in mind, both as victims and perpetrators. Law enforcement must consider the child's best interests in the law enforcement process. One way to do this is by using alternative punishments other than formal criminal penalties, such as returning them to their parents or placing them in correctional centers. Therefore, children caught committing crimes

are not immediately arrested, detained, and brought to court, but must undergo certain processes, such as mentoring and counseling, to determine what is in their best interests.

To prevent similar problems in the future, law enforcement must consider several factors in the best interests of children in conflict with the law. First, the age of criminal responsibility. This is important so that not just any child can be brought to justice, but rather based on a predetermined age. Indonesia stipulates that a child can be brought to justice starting at age eight. This age is actually very low. In many countries, the age of criminal responsibility is between 12 and 17. This age is often problematic because many children lack birth certificates, making it difficult to determine the age of an unknown child. This situation results in children being treated as adults when confronted with the law.

Both the legal process and the juvenile justice administration system. From the investigation stage, to trial, and imprisonment, children's rights are often violated. Early in the investigation process, the child's parents should be informed of the child's condition. If parents are unavailable, a guardian must be appointed. Furthermore, the child must receive support, including counseling by a psychologist and legal counsel, at the expense of the state.

Legal representation is crucial in the legal process experienced by children. Children are minors and lack the legal capacity to engage in legal action. Therefore, children in conflict with the law must involve their parents/guardians or legal counsel, particularly legal counsel, as they have the consent to assert their human rights in the legal process. The examination process must also be conducted in a child-friendly manner, such as by a child-centered expert with the child's consent, in a language the child understands. If the child cannot understand the language, an interpreter must be provided. Children must be given the opportunity to

rest, their privacy must be guaranteed, and violence must be avoided. Furthermore, during the trial, judges and prosecutors must not wear gowns, as this can cause fear and other psychological impacts on children.

Third, regarding health. Children's physical and mental health care is often neglected by the state while they are undergoing detention and sentencing. In fact, in many cases, children experience physical violence, whether perpetrated by state officials or fellow detainees.

Fourth, education. Children who commit crimes are generally expelled from school, even though there has been no final and binding decision as to whether the child is guilty or not. This violates the principle of the presumption of innocence and certainly eliminates the child's right to education. It must be remembered that imprisonment only removes a person's right to movement, while other rights must still be obtained. If a child is sentenced to imprisonment, all other rights must be granted, such as the right to education, the right to be free from violence, and so on. To broadly understand the theories regarding the purpose of punishment within the various schools of thought within criminal law, it is necessary to first understand the nature of punishment itself.

With the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the provisions for criminal sanctions and actions against children who commit crimes have been determined separately, distinct from the provisions of the Criminal Code, as a form of special protection for children. To implement guidance and provide protection for children, support is needed, both regarding institutions and more robust and adequate legal instruments.

The purpose of creating criminal provisions and actions in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System that are different from the criminal provisions in the Criminal Code, is intended to better protect and nurture children. In addition, according to the general

explanation of Law No. 11 of 2012, this distinction is intended to provide opportunities for children so that through guidance they will gain their identity to become independent, responsible, and useful human beings for themselves, their families, society, nation and state.

While delinquent behavior by children may sometimes be similar to crimes committed by adults, this doesn't mean the sanctions imposed are the same. Children are still children, still undergoing the physical, mental, psychological, and social development that leads to the same perfection as adults. Consequently, reactions to children differ from those of adults, which tend to be more punitive.

Following the issuance of Law Number 11 of 2012, which replaced Law Number 3 of 1997, specific regulations have been introduced regarding substantive criminal law, formal criminal law, and the implementation of criminal penalties for children who have committed delinquency. Therefore, Law Number 11 of 2012 is a special law (*lex specialis*) of the general law (*lex generalis*) contained in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP).

These various policies cannot be implemented at the lowest level. Law enforcement officials continue to adhere to positive law, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Furthermore, policies subordinate to this law have never been widely disseminated, lacking operational guidelines (*Juklak/Juknis*) to guide implementation in the field. Consequently, to date, there has been no significant progress in handling children in conflict with the law.

The root of the problem of children in conflict with the law in Indonesia is clear: regulatory instruments do not yet support child-centered approaches to handling children in conflict with the law. Therefore, establishing an adequate juvenile justice system is urgently needed to ensure the political will of the state/government to protect children by

guaranteeing their survival, growth, and development, as well as their right to protection from violence and discrimination.

Punishment for those proven to have committed a crime serves to re-educate and improve the offender's attitudes and behavior so that they can abandon their previous bad behavior. The principle of promoting the offender's interests, which is pursued through guidance, education, and rehabilitation, and resocialization, serves as the basis for sentencing.

Punishment is an effort to make perpetrators of criminal acts aware so that they regret their actions, and return them to being good citizens, obeying the law, upholding moral, social and religious values, so that a safe, orderly and peaceful society is achieved.

Considering the unique characteristics of children in their behavior and actions, it must be ensured that the punishment of children, especially the imposition of imprisonment, is a final measure when other efforts are unsuccessful.

The sentencing by a judge to a child who commits a crime is an important part, because the function of punishment for children is to provide protection.

When sentencing a child to a criminal offense, a judge has the freedom to determine the severity of the sentence. However, this freedom is not absolute and unlimited; it must take into account the nature and seriousness of the crime committed and the circumstances surrounding the actions expected of the child.

Decision considerations, such as the perpetrator's personality, actions, age, level of education, male or female, environment and national personality, need to receive attention. In other words, consideration of interests must be adjusted to the legal rules, principles and beliefs that also apply in the society in which one lives.

Also considering the view that there are human rights which are linked to the criteria for whether a person is considered responsible or not so that justice in the application of punishment can be created.

The judge's decision is essentially based on the accusations against the defendant and the results of the trial. If the accusations are proven and the defendant is liable to be convicted, the judge can determine the severity of the sentence based on the criminal law theory used.

In using criminal law theory, judges are given freedom because the legislation in the Criminal Code, jurisprudence, legal science, or doctrine does not stipulate it. However, in practice, judges commonly use a combined theory in determining the severity of punishment. This means that although judges are given the freedom to determine the severity of punishment between the maximum and minimum limits, this does not mean that there must be a subjective assessment from the judge, and for that reason, judges can use a combined theory, where at least the understanding of protecting the interests of society is not abandoned, in addition to punishment for the perpetrator.

The issue of equalizing the severity of punishment for similar criminal incidents must be treated equally and dissimilar criminal incidents must be treated differently. Practically, this is not as easy to treat as it seems. This is always faced by judges, but it must be understood that the severity of punishment, on the one hand, must be based on the circumstances of the act (daad) and the perpetrator (dader), and on the other hand, can be equated with the severity of punishment in the same incident.

The consequence of the basis between the act and the perpetrator, on the one hand, by equating the punishment in similar criminal cases, must be able to move. This is because in practice, the criminal cases before him and among the judges themselves have different views on assessing data in the same or comparable criminal cases.

Regarding the imposition of punishment for children in conflict with the law, it is regulated in Articles 71 to 81 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The forms of sanctions in Law No. 11 of 2012 appear to be the same as the forms of diversion programs, such as: community supervision, restitution, compensation, fines, counseling; special client services; activities involving the family (family intervention).

Examining the forms of sanctions in Law No. 11 of 2012 with the forms of diversion programs, there appears to be a similarity between the diversion program and one form of sanctions in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, namely the judge's decision through a formal criminal case examination process. The sanctions in Law No. 11 of 2012 can have a negative effect on the court process and create a stigma (bad label) against children. With the decisions in Law No. 11 of 2012, it has created a legal label that the child is a Child in Conflict with the Law, this is certainly different from the desired goal of the diversion concept.

The formulation policy in Law No. 11 of 2012 does not specify diversion in the form of termination of investigation and prosecution as well as termination of examination in the context of child protection (except for child perpetrators under 12 years old). However, with the types of judge's decisions in the form of: fines, returning to parents, guardians or foster parents, handing over to the state to participate in education, coaching and job training, or handing over to the Department of Social Affairs or community organizations engaged in education, coaching and job training, the same as the forms of diversion programs. Therefore, this shows an indication of the acceptability of the diversion concept. Criminal legal sanctions that can be imposed on children are regulated in Articles 71 to 81 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

Some narcotics are used legally, while others are used illegally. Narcotics and psychotropic abuse is essentially related to violations of statutory provisions. Narcotics and psychotropic abuse refers to the use and consumption of narcotics and psychotropics without the knowledge or supervision of a doctor. Continued use can lead to drug and psychotropic addiction.

Drug abuse is becoming increasingly concerning, having penetrated and eroded all levels of society and across all ages. Particularly concerning is the abuse committed by children. Consequently, children often face legal proceedings. Children are the future of the nation's younger generation, and we must protect them so they develop noble character. Therefore, it is only right that a child's rights be protected, whether they are criminals or not.

CONCLUSION

Legal provisions for children who commit narcotics crimes are regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which involves imposing penalties or actions on children who commit narcotics crimes. Judges' judgment plays a crucial role in sentencing child perpetrators of narcotics abuse. In their decisions, judges must remain steadfast in their determination to ensure the decision is in the best interests of the child.

Legal protection for children as perpetrators of narcotics crimes In the case where the child is a drug abuser, the right to rehabilitation is prioritized over a prison sentence and return to parents or family.

The obstacles faced by the police in enforcing the law against children as perpetrators of narcotics abuse crimes are the lack of awareness of the general public about their role in efforts to prevent and eradicate narcotics abuse by children. The moral attitudes and behavior of some Polri

officers who are still deviant, tend to seek personal gain, by commercializing cases of narcotics abuse by children.

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