

LEGAL PROTECTION OF CHILDREN IN THE CRIMINAL ACT OF NARCOTICS

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ABSTRACT

The child has a strategic role which is expressly stated that the state guarantees the right of every child to survival, growth and development and for the protection of violence and discrimination. Therefore, the best interests for children should be respected as the best interest for human survival. Children need protection from negative impacts of rapid development of globalization in communication and information, science and technology advancement. Entering the growth phase of children during adolescence, children have a pattern of emotions are often changing and difficult to guess, more curiosity sometimes involve children to things that have a negative impact. Especially in exploring new things. Does not rule out that at the age of children will fall into the use of narcotics and even become a narcotics dealer. This is possible because narcotics have addictive substances that make a person becomes dependent, while on the other hand the profit of narcotics sales are so profitable, not infrequently narcotics dealers involve children who are in the poverty line. Rules used against children as perpetrators of crime are Law No. 11 of 2012 on the Criminal Justice System of Children, unless not regulated using existing rules of the Criminal Code. Law enforcers must be careful in enforcing law enforcement of children as perpetrators of narcotics, especially the police (investigators) as the spearhead in law enforcement.

Keywords: Protection, Child, Narcotics Crime

Introduction

Children are an integral part of human survival and the ongoing state and nation. Article 28 B Paragraph (2) of the Constitution of the Republic of Indonesia affirming that "that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination." The article shows how vital the child as the civilization of an upcoming nation. This is in line with Arief Gosita's opinion that protecting children today is tantamount to protecting family, community, nation and country in the future.

The child needs to be protected from the negative impacts of rapid development, the globalization of information and communications, the advancement of science and technology, and the changing styles and way of life of some people who have brought about fundamental social change in people's lives that have a great influence on values and child behavior. Deviation of behavior or unlawful acts committed by children, among others, caused by factors outside the child's self. Data of children in conflict with the law of the Directorate General of Corrections shows that the crime rate as well as the negative effect of the abuse of narcotics, psychotropic substances, and addictive substances is increasing.

Abuses of behavior or unlawful acts committed by children are caused by various factors, among others, the negative impact of rapid development development, the flow of globalization in the field of communication and information, the progress of science and technology and changes in the way and lifestyle of some parents, has brought about a fundamental social change in people's lives that is very influential on the value and behavior of children. In addition, children who are not or do not get the affection of care, guidance and coaching in the development of attitudes, adjustment behavior and supervision of parents, guardians or foster parents will easily be dragged in the unhealthy social circles and the environment and harm his personal development.

The enforcement of unlawful behavior or acts committed by children is caused by various factors, such as the negative impact of rapid development development, the flow of globalization in the field of communication and information, the advancement of science and technology and the change of way and lifestyle of some parents, has brought about fundamental social change in the lives of people who are very influential to the value and behavior of children. In addition, children who are not or do not get the affection of care, guidance and coaching in the development of attitudes, adjustment behavior and supervision of parents, guardians or foster parents will easily be dragged in the unhealthy social circles and the environment and harm his personal development.

Entering the growth phase of children during adolescence, children have a pattern of emotions are often changing, and difficult to guess, more curiosity sometimes involve children to things that have negative impact. Especially in explore things new. Does not rule out that at the age of children will fall on the use of drugs and even become a drug dealer, it is possible because drug has an addictive substance that makes a person becomes dependent, while on the other hand profits so lucrative drug sales, not infrequently drug dealers involving children in the poverty line. Moreover, the circulation of narcotics has targeted not only adults but has entered the territory of children. In addition to social losses, drug abuse also makes economic losses both real costs and opportunity costs.

There is a contradiction when a criminal act which is an extraordinary crime and can not be tolerated, is confronted with the child as the perpetrator of the crime, in which case the child is a special object of punishment different from adult criminalization.

Treatment in the provision of criminal sanctions should not be equalized with punishment against parents, this is due to factors that underlie the child's criminal conduct and the physical and psychological condition of children who are still in the growth phase.

The rules used against children as perpetrators of crime are Law No. 11 of 2012 on the Criminal Justice System of Children, unless not regulated using the rules contained in the Criminal Code. Law enforcers should be careful in enforcing law enforcement of children as perpetrators of narcotics crime, especially the police (investigators) as the spearhead in law enforcement.

Children during the review process (from police, prosecutors to the courts) feel unappreciated, the officers' treatment tends to put a negative image on their minds (stigmatization). The treatment of such officers, one of the reasons is because the children feel handled by law officers who do not understand their problems as children. The requirement of professional law enforcement in the field of children is not fulfilled. Formal requirements are put forward rather than substantial requirements in the appointment of special law enforcement of children. Their legitimacy as law enforcement in the field of children is solely based on the Appointment Letter as the Special Police of the Child, the Special Prosecutor of the Child, the Special Judge of the Child, and not the substantial requirement as mandated by Law No. 3 of 1997 on the Juvenile Court that has been replaced with Law Number 11 Year 2012 on the Criminal Justice System of Children whereas through the Law on Child Criminal Justice System it is expected that officers acting as investigators, prosecutors and judges really master and understand the problem of children, so that in the process of handling does not cause interference both physically and mentally to the child's future.

Factors Causing Narcotics Abuse In Children

Generally, the overall factors causing narcotic crime can be grouped into:

1. Internal Factors

There are various psychological causes that can push a person into a narcotic crime, internal causes include:

a. Feelings of Selfish

It is a trait that everyone has. This trait often dominates a person's behavior unconsciously, as well as for people who deal with narcotics / users and narcotics dealers. At one time the selfish sense can encourage to have and or enjoy fully what might be produced from narcotics.

b. Will wants to be free

This trait is also a basic human nature. While in the social order many people, the norms that restrict the free will. This desire for freedom arises and manifests itself in behavior whenever one is overwhelmed with thoughts and feelings. In this case a person who is in the crush interact with others in connection with narcotics, then very easily the person is frozen on a narcotic crime.

c. Shock of the soul

This generally happens because one of the causes that psychologically it can not be faced / over it. In a state of unstable soul. If there are parties who communicate with the narcotics then he will easily engage a narcotic crime.

d. Feel curious

This feeling is generally more dominant in generally younger humans, the desire for this is not limited to things that are negative. Curiosity about narcotics, this can also encourage a person to commit acts that belong to acts in a narcotics crime.

2. External Factors Performers

External factors are factors that come from outside the actors are among others:

a. The economy

Economic situation can basically be divided into 2, namely the state of good economic and economic conditions are less or poor. In good economic conditions people can easily reach or fulfill their needs. Likewise, on the contrary, in relation to narcotics, for people belonging to good economic groups can accelerate their desire to know, enjoy, and so on the narcotics, while for the difficult economic circumstances can also do so. But smaller than those with enough economy.

b. Interaction / environment

This association basically consists of association / residential environment, school environment or workplace and other social environment, the three environments can give a negative influence on someone, meaning the consequences caused by the interaction with the environment a person can do good deeds and can also otherwise. If the environment is narcotics can be obtained easily, then by itself tendency to do more narcotic criminal acts.

c. Convenience

The ease here is meant by the increasing number of narcotics in the black market, the greater the chance of narcotic crime.

d. Lack of supervision

The supervision here is intended to control the supply of narcotics, its use and distribution, so it includes not only government oversight but also public scrutiny. The government plays an important role in restricting the circulation, production, and use of narcotics. In the absence of such oversight, the black market, dark production and drug addicts populations will increase.

e. Displeasure with social circumstances

For someone who is oppressed by social circumstances then narcotics can make a means to escape from the crush. although it is only temporary, but for certain people who have insight, money and so on, can not only use narcotics as a means of escape from the crush of social idiosyncrasies. But it has been far away can be used as a tool for the achievement of certain goals.

National Narcotics Agency (BNN) in anti-narcotics book reading book describes that factors causing abuse of narcotics by child / adolescent is as follows:

a. Individual factors

Individual factors consist of aspects of personality, and anxiety / depression included in the personality aspect include personality who want to know, easily disappointed, impatience and low self-esteem. While being included in anxiety / depression is due to not being able to solve life difficulties so as to give birth to self in the use of drugs.

b. Socio-cultural factors

Socio-cultural factors consist of family conditions and the influence of friends. Family conditions here are disharmonious conditions such as divorced parents, busy parents and rarely at home and the excessive family economy and the lack of everything. While that included in the influence of friends for example because friends with someone who turns on drug users and want to be accepted in a group.

c. Environmental factor

Environmental factors, for example, because of the association of children / adolescents who abuse drugs, the unclear actions of the school if there are children involved in drugs that can affect other children, and the environment where children live that do not provide good behavior.

In addition Graham Blamie a psychiatrist divides the cause of a teenager who committed drug abuse to be nine as quoted in Sudarsono's book:

- a. To prove the truth in doing dangerous actions such as speeding, getting into shape, getting along with women and others
- b. To demonstrate action against authority against parents, teachers or against social norms
- c. To facilitate the distribution and sex acts
- d. To break away from feeling lonely and want to gain a sensational and emotional experience
- e. To find and discover the meaning of life
- f. To fill the void and loneliness / boredom
- g. To relieve the anxiety, frustration, and bitterness of life
- h. To follow the will of comrades in the framework of solidarity coaching
- i. For fun and curiosity driven

The Concept of Protection Against Children

The principle of legal protection of government action rests on the concept of recognition and protection of human rights because historically from the West the concepts of recognition and protection of human rights are directed to the limitation and laying of public obligations and government.

In formulating principles of legal protection in Indonesia the foundation is Pancasila as the ideology and philosophy of the state. The conception of legal protection for the people in the West comes from the concepts of Rechtsstaat and Rule of The Law. By using the Western conception as a frame of mind based on Pancasila, the principle of legal protection in Indonesia is the principle of recognition and protection of human dignity derived from Pancasila. The principle of legal protection of governmental action rests on the concept of recognition and protection of human rights because historically in the West the concepts of recognition and protection of human rights are directed to the limits and laying of public obligations and government.

J.F.Doek and H.M. A. Drewe in Satya Arinanto, provides the definition of child protection in two senses, namely in the broad sense that all rules of life that provide protection to the immature and give them the possibility to develop, and in the narrow sense of the legal protection contained in the provisions of civil law, the provisions of criminal law and the provisions of procedural law

In the protection of the law especially for the people of Indonesia, Philip M. Hardjon divides the two kinds of legal protection:

1. Protection of preventive law.

In this preventive law protection the legal subject is given an opportunity to file his objection and opinion before a government decision gets a definitive form. The goal is to prevent the occurrence of disputes. The protection of preventive law is especially meaningful for governmental action based on freedom of action because with preventive law protection the government is encouraged to be cautious in making discretionary decisions. In Indonesia there is no specific regulation on preventive legal protection.

2. Protection of repressive law.

Refreshing legal protection aims to resolve disputes. Handling of legal protection by public courts and administrative courts in Indonesia includes this category of legal protection. The principle of legal protection of government action rests on the concept of recognition and protection of human rights directed to the limits and laying of public and government obligations. The second principle underlying the legal protection of governmental action is the principle of the rule of law. Being associated with the recognition and protection of human rights has a central place and can be linked to the objectives of the rule of law.

The child is a trust and a gift of God Almighty, which always must be maintained because in him inherent dignity, dignity, rights as human beings, which must be upheld. In terms of national and state life, the child is the future of the nation and the future generation of the nation's ideals so that every child has the right to survive, to grow and to grow, to participate, and to be entitled to protection from acts of violence and discrimination as well as civil rights and freedoms.

To realize these ideals, it is necessary a political will of the government to be able to realize these things through a form of protection of the rights of the child. Law No. 23 of 2002 on Child Protection, Article 1 point 2 explains that child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop and participate optimally in accordance with the dignity, human dignity, and have protection from violence and discrimination.

Arif Gosita gave his view on child protection that is a business that provides conditions that protect children to exercise their rights and obligations. Child protection is a manifestation of justice in a society. Thus, the protection of children should be cultivated in various areas of state and community life.

Child protection activities are legal actions that bring legal consequences. Therefore, there is a need for legal guarantee for the child protection activities. legal certainty should be endeavored for the sake of continuity of child protection activities and to prevent misconduct that carries undesirable adverse outcomes in the implementation of child protection.

The Position of Police in the Child Criminal Justice System

The position of the police in the criminal justice system (including the criminal justice system of children) can be seen in Law No. 8 of 1981 on the Criminal Procedure Code (KUHP). According to Article 6 Paragraph (1) Sub-Paragraph a of the Criminal Procedure Code, the investigator is a police officer of the Republic of Indonesia while the authority of the investigator in the context of the criminal justice system is contained in Article 7 paragraph (1)

- a. Receive a report or complaint from a person about a crime
- b. Take first action at the time of the incident
- c. Tried to stop a suspect and check the suspect's identity
- d. Make arrests of detention, searches, and seizures
- e. Checking and confiscating mail
- f. Take fingerprints and photograph someone
- g. Calling people to be heard and checked as suspects or witnesses
- h. Bring in the necessary expert in connection with the examination of the case
- i. Hold an investigation suspension
- j. Carry out other actions in a responsible legal manner.

The existence of police in the criminal justice system of children is also seen in Law No. 2 of 2002 on the Indonesian National Police. According to Article 2 of Law Number 2 Year 2002 affirms that the function of the police is one of the functions of state government in the law of protection, protection, and service to the public. With regard to the basic tasks of the police are regulated in Article 13 of Law Number 2 of 2002, namely:

- a. Maintaining security and public order
- b. Uphold the law
- c. Providing protection, shelter and service to the community

With regard to the task of enforcing the police authority law as contained in Article 16 of Law Number 2 Year 2002 namely:

- a. Make arrests, detentions, searches, and seizures
- b. Prohibit any person from leaving or entering a crime scene for the purpose of investigation
- c. Bringing and confronting the person to the investigator for investigation
- d. Told the suspect and asked for and checked the identification.
- e. Checking and confiscating mail
- f. Calling people to be heard and checked as suspects or witnesses
- g. Bring in the necessary expert in connection with the examination of the case
- h. Hold an investigation suspension
- i. Submit case files to the prosecutor
- j. File a request directly to the Immigration Officer at the Immigration Checkpoint in an urgent or abrupt manner to prevent or deter anyone suspected of committing a criminal offense.
- k. Provide guidance and investigation assistance to civil servant investigators to be submitted to the public prosecutor
- l. Carry out other actions under responsible law.

Based on the description in terms of tasks, the police as an institution in the context of enforcing the law, especially the criminal law beside using repressive approaches, preventive approach is also implemented it aims to maintain order and law enforcement

The duties of preventive police prevent, regulate or take actions in the form of business, activities for the sake of achieving security, order, peace, and calm in society. Police efforts are in the form of patrolling, counseling, monitoring and assistance to the community which, when associated with the law, is referred to as protection, protection and public servant. These preventive tasks are more oriented towards the welfare of the general public. The tasks in the field of refreshing in relation to the criminal justice system are to conduct an investigation of criminal acts in accordance with the provisions of the laws and regulations.

With regard to the criminal justice system of children, the existence of police as investigators is regulated in Article 26 of the Criminal Justice System Law Act, namely:

- a. The investigation of the child's case shall be conducted by an investigator determined by the decision of the head of the state police of the Republic of Indonesia or another officer appointed by the head of the state police of the Republic of Indonesia
- b. The examination of the child of the victim or the child of the witness is carried out by the investigator as referred to in paragraph (1)
- c. Conditions to be determined as investigators as referred to in paragraph (1) include:
 1. Have experienced as an investigator
 2. Have an interest, concern, dedication, and understanding of the child's problem and
 3. Have followed the technical training on child protection.

d. In the absence of an investigator who meets the requirements as referred to in paragraph (3) the task of investigation shall be carried out by the investigator conducting the criminal investigation task carried out by the adult.

Conditions of interest, concern, dedication, and understanding of the child's problem as described in the elucidation of Article 26 paragraph (3) sub-paragraph b of the Criminal Justice System Law are understood:

- a. Child coaching that includes family parenting, polite guidance patterns, child discipline and effective, affective and sympathetic approaches.
- b. Growth and development of children and
- c. Various values that live in the community that affect the child's life.

The police as investigators in the child criminal justice system have been given the authority to divert through a restorative justice approach. This can be seen in the provisions of Article 7 Paragraph (1) of the Criminal Justice System Law, which affirms that at the level of investigation, prosecution and examination of children's cases in the district court must be attempted to diversify. Furthermore, in Article 8 Paragraph (1) it is explained that the diversion is done through deliberation by involving the child and his / her parents / guardian, victim and / or parent / guardian, social guidance and professional social worker based on restorative justice approach. Another provision which regulates the implementation of diversion by the police as the investigator is the provision contained in Article 29 of the Criminal Justice System Law Act which affirms:

- a. The investigator shall seek the diversion within a maximum of 7 (seven) days after the investigation commences
- b. The diversion process referred to in paragraph (1) shall be executed no later than 30 (thirty) days after the commencement of the diversion
- c. In the event that the diversion process reaches an agreement, the investigator submits the version of the diversified event and the diversion agreement to the head of the district court for determination
- d. In the event of failure, the investigator is obliged to continue the investigation, and delegate the case to the public prosecutor by enclosing the divergence report and the community research report.

Based on the above description, the role of police as an investigator in the criminal justice system of children in addition to having duties in the field of investigation and investigation in supporting the criminal justice process, also given the authority to solve cases of crime committed by children without having to go through the process of the judiciary in general, diversion which means the transfer of the settlement of cases from the criminal justice process to proceedings outside the criminal justice through a restorative justice approach. This is in accordance with the provisions contained in Article 7 of KUHAP and Article 16 of Law Number 2 Year 2002 as well as Article 26 and Article 29 of the SPPA Law.

Settlement Efforts Against Children Who Committed Narcotics Crime

A child who commits a criminal act of narcotics misappropriation must still obtain legal protection in court proceedings for the best interests of the child. Legal protection for children can be interpreted as a legal protection against various freedom and rights (fundamental right and freedom off children) and various interests related to child welfare so the issue of child protection covers a very wide scope.

In general, the imposition of criminal sanctions against offenders is often regarded as the objective of criminal law. Therefore, if an offender has been brought before the court and then sentenced to a criminal sanction, then the legal case is deemed to have expired. Such a view, having positioned justice in criminal law and criminal law enforcement, is a sanction of criminal as set forth in the violated articles.

Criminal punishment applied under the Criminal Code, rather than educating children for the better, but aggravating conditions and can increase the level of child crime. Implementation of punishment against children based on Law Number 11 Year 2012 is the basis for imposing sanctions on children who commit criminal acts. In Law No. 35 of 2014 on Narcotics does not specifically regulate the provisions of criminal sanctions for children, but basically a child who commits a narcotic act as a perpetrator of illicit drug trafficking is for example a child who becomes a courier to run a process of illicit narcotics remains charged with articles as defined in the criminal provisions stipulated in the narcotics law but does not exclude the specific provisions set forth in Law No. 11 of 2012 on the Criminal Justice System of the Child.

Determination of the age limit of the child in relation to criminal liability which may be presented before the court of 12 (twelve years) to 18 (eighteen) according to the decision of the Constitutional Court Number 1 / PUUVIII / 201/021 and as stipulated in Law Number 11 Year 2012 on Child Criminal Justice System. Article 69 paragraph (2) also stipulates that a child who is not yet 14 years of age may only be subject to action. Therefore, children aged 12 years up to 13 years can only be sanctioned, while those aged 14 years to 18 years can be subject to criminal sanctions as stipulated in Law Number 11 Year 2012 on Child Criminal Justice System.

For children not yet 12 years old, Article 21 paragraph (1) of Law Number 11 of 2012 stipulates that in the event that a child is not 12 years old or suspected of committing a criminal act, the investigator, the social guidance and professional social worker decide to hand over to the parent / guardian or to include in the education, coaching and mentoring program in the institution that handles the social welfare field, either at the central or regional level for a maximum period of 6 months.

From the category of age limits set by the law, if the child who is the perpetrator of narcotic crime and proven to be proud of Law Number 35 Year 2009 on Narcotics, still in the age category 12 years up to 13 years then the judge can only drop sanction of action to the child in accordance with Article 82 of Law Number 11 Year 2012.

Basically there is no provision that regulate if the child does not know anything. This is what will be proved in the trial and judge who will determine whether the child is guilty or not.

The best protection and interests of the child remain the priority as provided in Law Number 11 Year 2012 on the Criminal Justice System of the Child. Special criminal acts committed by children, there is called diversion, namely the transfer of settlement of child cases from the criminal justice process to the process outside the criminal justice. at the level of the prosecution investigation, and the examination of a child's case in a district court must be attempted by a diversion. The diversion is only carried out in the event that a criminal offense is punishable by imprisonment under 7 years and not a repeat of a crime. is to avoid and keep children away from the judicial process so as to avoid stigmatization of children facing the law and hopefully the child can return to the social environment fairly. This diversion process is conducted through consultation with the involvement of children and parents, victims and / or parents / guardians, social guidance and professional social workers based on restorative justice approach.

Diversi as an Alternative Solution for Children Who Committed Narcotics Crime

Implementation of punishment against children often lead to debate, because in this case has a very broad consequence both concerning the behavior and stigma in society and also in the child, but with the issuance of Law No. 11 of 2012 on the Criminal Justice System of Children who reviewed applied since July 30, 2014 the application of punishment is more fostering and protecting against children, compared with Law No. 3 of 1997 on Juvenile Court which is no longer relevant because it is not in accordance with the times.

The treatment of children suspected of committing criminal offenses is often refreshing. The judicial process of children often loses its essential meaning as a mechanism that must end in an effort to protect the best interests of the child. The criminal justice process often presents itself as a mechanism that is oriented towards formal law enforcement and is not oriented towards the child's interests.

Treatments that tend to stigmatize children are more important than the treatment of law enforcement officers that reflect the protection of the rights of children committing criminal acts. Children who are involved in the criminal justice process get poor treatment even in some cases have been treated worse when compared with adults who are in the same situation. The majority of children who commit criminal acts experience violence during the criminal justice process.

A judge in deciding a case should base the ruling using three aspects, namely philosophically, juridically, sociologically, but in deciding cases of caught narcotics abuse should see first the background of the child based on the results of community research by the guidance of society, so that the results of research as a consideration for the judge in imposing a crime against the child.

Therefore, the factors causing the vulnerability of children involved in narcotics abuse are due to external factors such as disharmony of family relationships, life below the poverty line and children becoming victims of drug trafficking syndicates. In the content of the ruling, the considerations underlying the ruling are more contradictory to the legal facts, and exclude the background of the child which will be the philosophical, sociological and juridical foundation.

Philosophically imposing sanctions against children, has a goal to be achieved is for the protection of the law that must put forward the best for the interests of ana, so that the achievement of child welfare. It is an integral part of social welfare, in the sense that the welfare or interests of the child are under social interest

Juridically, there is a paradigmatic dilemma, related to the approach taken against children who commit drug abuse. The juridical child who commits the abuse of narcotics is qualified as a criminal offender, but conceptually, because the abuse of narcotics enters into a crime without victim qualification which means that the victim of the crime is the perpetrator himself, in the case of the abuse of narcotics that is the victim (crime) is the perpetrator, thus conceptually the child who commits the abuse of narcotics other than his qualification as an offender is a victim.

Diversi is undertaken to find a win-win solution in which the concept of birth diversion is based on the fact that criminal justice proceedings against offenders through the conventional criminal justice system pose more harm than good.

Children of the offender of narcotics other than can be subject to alternative sanctions that diversi can also be considered to be sanctioned action whose purpose is not to make children as perpetrators of criminal acts ended in prison but rather provide care and remedial action to the child of the perpetrators of narcotics as a substitute of punishment , this is in accordance with the purpose rather than the theory of treatment.

Conclusion

1. Factors causing children to commit narcotics crime can be divided into two, namely internal factors and external factors. Internal factors include family factors, such as broken home, selfishness, and curiosity of the child, mental shock, free and others, while external factors of economic, environmental and social factors
2. Implementation of legal protection against children who commits a narcotic crime is at the time of the examination shall be accompanied by the legal counsel and also the parents / guardians and then conducted special research from prisons so that the results of the study can be a recommendation to reduce or alleviate child punishment and efforts the settlement of a child who commits a narcotic crime, is resolved in a repressive manner, that is processed to the Public Prosecutor and hearing to the court, whereas the process of the child brought to justice should be avoided in the best interest of the child.

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