

PREVENTION EFFORTS OF CHILDREN AS ACTORS IN PERSPECTIVE CRIME OF NARCOTICS VALUE OF JUSTICE

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Abstract

Drugs are a serious problem for this nation. These illicit goods undermine anyone. People's representatives, judges, artists, pilots, students, workers, even housewives do not escape drug trafficking. In terms of age, drugs also never choose their victims, ranging from children, teenagers, adults, even to the elderly. Indonesia is a 'paradise' of drug trafficking. Why not, if judging from the circulation of drugs in the world, our country ranks third as the largest drug market in the world. Crime prevention can be done either by using criminal justice (other judicial) or other means outside criminal justice (non-judicial). Efforts to transfer the process from the judicial process to the non-judicial process in the handling of narcotics abuse by children, are basically an effort to solve narcotics abuse committed by children outside the criminal justice channel. That is, the transfer of the process from the judicial process to the non-judicial process in the handling of narcotics abuse by children, is basically an effort to avoid children from the application of criminal law and punishment. Legal treatment for minors in the case of narcotics trafficking should receive serious attention. Law enforcers and process and decide must be sure that the decisions taken will be a strong basis for returning and regulating children towards a good future to develop themselves as citizens who are responsible for the life of the nation.

Keywords: Prevention, Children, Crime, Narcotics, Value of Justice

INTRODUCTION

Law in its development is not only used to regulate behavior that already exists in society and maintain existing patterns of habits but more than that, the law leads to its use as a means. To carry out the goals that have been chosen and determined so that they can be realized in the community, there are several means needed. One sufficient means is the law with various forms of existing legislation.¹ The problem of crime is one of the social problems that is always interesting and demands serious attention from time to

time. Even more. According to general assumptions and several observations and research of various parties, there is a tendency to increase in certain forms and types of crime, both in quality and quantity.²

Drugs have become a serious problem for this nation. These illicit goods undermine anyone. People's representatives, judges, artists, pilots, students, workers, even housewives do not escape drug trafficking. In terms of age, drugs also never choose their victims, ranging from children, teenagers, adults, even to the elderly. Indonesia is a 'paradise' of drug trafficking. Why not, if judging from the circulation of drugs in the

¹. Bambang Sunggono, *Hukum dan Kebijakan Publik*, Jakarta: Sinar Grafika, p.76. Law is a norm that directs people to achieve certain ideals and circumstances by not ignoring the world of reality. Therefore, the law is mainly made with full awareness by the state and used to achieve a certain goal.

² Moh. Kemal Darmawan, 1994, *Strategi Pencegahan Kejahatan*, Bandung: Citra Bakti, p. 1

world, our country ranks third as the largest drug market in the world.

The more sophisticated advances in communication technology and transportation technology make drug trafficking transactions easier. Transactions can be done through internet media that are subject to packages, so that sellers and buyers do not need to do face-to-face which is more easily known by the police. Besides that, smuggled drugs are packaged in various ways to trick security officers. The strong reason that makes Indonesia experience a crisis in drug trafficking is in fact, 60-70 percent of narcotics circulating in Indonesia come from abroad, only 30-40 percent of narcotics. Local origin, mainly marijuana. This means that Indonesia has indeed lost its borders which makes it easier for foreign countries to export illegal drugs.

The development of narcotics use in early 2000 BC was as a tool for ritual ceremonies and besides that it was also used for treatment. The first type of narcotics used in the beginning was opium or commonly referred to as mandate or opium. Opium trading is growing rapidly in Egypt, Greece and several regions in the Middle East, Asia and South Africa. In line with the development of colonialization, the opium trade was growing and the use of opium was carried out massively by ethnic Chinese, especially in colonial countries at that time, including Indonesia, which was under the control of the Dutch colonial government.³ A very large

³Romli Atmasasmita, 1997, *Tindak Pidana Narkotika Transnasional dalam Sistem Hukum Pidana Indonesia*, Bandung, Citra Aditya Bhakti, p. 1.

population, exceeding the 200 million population, certainly makes Indonesia a target of illicit drug trafficking. Whereas initially Indonesia was only a place for drug trafficking traffic, due to its strategic location. But gradually these illegal drug traffickers began to make Indonesia as their tender target to distribute their drug trade. Over time, Indonesia began to transform, not only as a place for drug trafficking, but also as a place to produce drugs, as evidenced by the discovery of several drug laboratories in the Indonesian territory. This problem is certainly a very serious problem which in turn can cause national security and order disturbances.

In the beginning narcotics were only used as a tool for religious rituals and besides that they were also used for medicine, while the first types of narcotics used in the beginning were opium or commonly referred to as madat or opium.⁴ Narcotics abuse cases are increasing. This is evidenced by the almost every day press coverage from newspapers and electronic media about smuggling, trafficking, arrest and detention related to drug abuse issues. The purpose of narcotics abuse is a deviant or unintentional use of narcotics. So the act violates the law and is threatened with criminal conduct.

Until now there are still many studies on factors that can affect drug abuse, including: dependency factors, the occurrence of dependence is as a result of anesthesia. In

⁴Kusno Adi, 2009, *Diversi Sebagai Upaya Alternative Penanggulangan Tindak Pidana Narkotika Oleh Anak*. Malang, UMM Press, p. 3

this case, it relates to subjective subjective feelings as a direct result of drug users, the pain that arises from stopping drug use can encourage so that it is not aggressive and easy to do social interaction. The onset of withdrawal-like symptoms when experiencing or witnessing a situation that has to do with the use of the drug. Based on the description above, the problems in this paper are: How to prevent children as narcotics criminals in the perspective of fairness?

RESEARCH METHODS

This research uses a research method with a juridisempiris research approach which is directed to obtain secondary data and primary data sourced from library materials as well as from the implementation of legislation. Empirical juridical legal research.

DISCUSSION

Efforts to prevent children as narcotics offenders in the perspective of the value of justice

Value is the quality of a thing that makes it preferred, desired, pursued, valued useful and can make the person who lives it dignified, value is a preference that is reflected in the behavior and values will always relating to goodness, virtue and nobility and will be something that is valued and upheld and pursued by someone so that he feels satisfaction and feels to be a perfect human being.⁵ Plato in his book *The Republic* states that justice is a social and political concept that cannot be avoided, then a

⁵Sutarjo Adisusilo, JR, 2013, *Pembelajaran Nilai- Karakter*, Jakarta: Rajawali Press, p. 56-57.

meditation of experienced justice usually becomes a meditation in an ideal country and society. Ulpianus described justice as "justitia est constant et perpetua voluntas ius suum cuque tribuendi (justice is a constant and continuous will to give everyone what is right for him) or tribuere cuique to give everybody his own give to everyone who becomes his rights.⁶

Sociological factors, this factor considers that family members easily feel that they have faced life's challenges so there is no patience and enough time to accept the concepts of religion, morals, education and others, but are accepted with an attitude that is less confident whether they can solve their life problems. Seeing a bleak future encourages people to take shortcuts in the form of drug use. Drug abuse can arise due to the process of the political system or values that are capable and can also be an attitude of opposition to authority figures (parents) through drugs is an effort to achieve a safer and more certain condition.⁷

Judging from the danger and the level of circulation, the government finally established the Narcotics Act, namely Law Number 35 of 2009, with the issuance of the Act is expected to prevent and suppress the increase in the circulation and use of narcotics in the territory of Indonesia. With legislation that specializes in narcotics, all parties hope to work well and the existing sanctions can be fairly established for narcotics criminals.

⁶ K. Bertens, 2000, *Pengantar Etika Bisnis*, Yogyakarta, Kanisius, p. 86-87

⁷ M. Arif, 2001, *Membendung Ancaman Narkoba pada Generasi Muda Melalui Partisipasi Masyarakat*, Jakarta: Pustaka Sinar Harapan, p. 45.

Narcotics law is very necessary to be enforced because of the enormous influence of narcotics on the survival of a nation, especially for the young generation of the nation's successor.

According to WHO what is meant by medicine (*drug*) is every ingredient (substance / substance) which if entered in a living organism will give a change in one or more function of the organism. Substances such as opioda (morphine, heroin), cocaine, marijuana, sedativa / hiprotika and alcohol are substances that have such effects, especially in the functions of thinking, feelings and behavior of those who wear them. Substance abuse and substance (*drugs abuse*) is the use of the substance in question is not used for medical purposes but rather to enjoy the effects of both the small and large doses, such misuse can cause dependency (*drugs*⁸ dependence).

Narcotics no longer see age, ranging from children, adolescents, adults to parents even though they do not escape the abuse of drug abuse. It is estimated that around 1.5 percent of Indonesia's total population are victims of drug abuse. The problem of drug trafficking is also no less worrying, not only in big cities but even in Indonesia. This drug itself stands for Narcotics, Psychotropic and other dangerous substances. The term drug which is widely known in Indonesia comes from the English language Narcotics which means drugs. According to Article 1 of Act Number 35 of 2009 concerning Narcotics, the

definition of narcotics is a substance or drug derived from plants or non-plants, both synthetic and semisynthetic which can cause a decrease or change in consciousness, loss of taste, reduce to relieve pain and can cause dependence, which is divided into groups as attached to the law.

Prison is only appropriate for adults who commit crimes. The child is not right in jail because it will turn off his future hopes. He is an autonomous person who is growing, what is needed is help and guidance. The right trial for child delinquency perpetrators is a model of justice *restorative* that is to improve and restore the relationship between perpetrators and victims so that the harmony of life is maintained. The maximum penalty they may receive is forced education. This model will truly be realized if, the juvenile justice becomes a judicial system of its own justice which is not part of the general criminal justice system.

In order to smuggle drugs into Indonesia, in fact the syndicates will use various methods, including the mode by utilizing underage children as drug couriers. Therefore the investigators need to be aware of the possibility of suspected criminal cases of narcotics that are underage children. Law Number 11 of 2012 concerning Child Criminal Justice System (SPPA) can conflict with Law Number 35 of 2009 concerning Narcotics. This is because the SPPA Law puts forward the element of diversion or transfer of criminal penalties at the level of examination, prosecution and trial for the suspect. "It means that if a drug suspect is a minor then it

⁸Dadang Hawari, 1991, *Penyalahgunaan Narkotika dan Zat Adiktif*, Jakarta: BPFKUL, p. 15

is possible that he will get a different sanction, because the SPPA Act applies to him, a 14-year-old narcotics criminal who acts as a drug courier, his case is treated with diversion. Darmawel said that such cases need to be watched out by investigators because it is possible to become a new mode used by drug syndicates. "Generally, couriers are always reasonable because they don't know anything. Investigators need to ensure that the child who is a drug courier is aware of his actions or is indeed used by a syndicate⁹

The criminal threat for children who are narcotics couriers is half of the criminal threats contained in the Narcotics Law. The international narcotics network has a new mode, which involves minors as supplier couriers. This mode was revealed from the findings of the case revealed by BNN in collaboration with Halim Perdanakusum Customs and Excise on August 18, 2016. On Thursday (25/8), officers managed to secure 13 plastic packs containing marijuana leaves weighing 256.8 grams, which were packaged in lego plastic toys. . "There were three suspects secured by initials X, AML and AMM. Modus circulates it by ordering online and making children as couriers, "said a BNN spokesman, Senior Commissioner Slamet Pribadi. The perpetrator with the initials X is a 16-year-old child.

In November 2017, drug abuse of shabu-shabu (SS) type in Bangkalan was increasingly alarming. Bangkalan District Police succeeded in capturing Gagah Dafi who

⁹<http://jakrev.com/megapolitan/bnn-resah-dualisme-hukum-bagi-anak-sebir-narkoba>

was fourteen years old. Dafi admitted that he had only just taken the SS. He was affected because he was invited by his friends so he dared to consume SS (shabu-shabu).¹⁰

Another case in January 2018 Jepara Police Station secured children who were still in elementary school because they were drug couriers. From the results of the information obtained, he said, the child did not know that he was carrying drugs. The child is only told by someone to deliver the goods to someone else. In 2017 alone, there were 26 drug cases in Jepara. Of these cases 33 people were declared suspects.¹¹

Another case in April 2018 The Narcotics National Agency (BNN) is still awaiting the results of a 3.8-year-old CSA toddler urine sample suspected of being narcotics-indicated after eating YUPI-branded sweets in Selatpanjang, Meranti, Riau.¹²

Narcotics cases involving children as couriers are not new. The perpetrators involved in the international narcotics network by using children as couriers can be charged under Article 133 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. For perpetrators who order by giving or promising something, or by forcing them with threats and violence, or committing deception against the child, the offender can be sentenced to death or imprisonment for life,

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<https://radar.jawapos.com/radarmadura/read/2017/11/29/30282/anak-14-tahun-jadi-tersangka-kasusnoba>

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<http://www.tribunnews.com/regional/2018/01/24/duh-anak-sd-di-jepara-tertangkap-saat-jadi-kurir-narkoba>

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<https://www.suara.com/news/2018/04/04/122030/kasus-narkoba-bayi-csa-orangtua-diminta-perailah-makanan-anak>

or imprisonment of at least 5 (five) year and no later than 20 years and a fine of at least Rp. 2 billion and a maximum of Rp. 20 billion. For couriers or people who are intermediaries in the narcotics trade chain, penalties that can be snared depend on the type of narcotics they carry. For example, for intermediaries in narcotics transactions class I based on Article 114 paragraph (1) of Law Number 35 of 2009, the perpetrators may be threatened with life imprisonment or imprisonment of at least 5 (five) years and a fine of at least Rp 1 billion and a maximum of Rp. 10 billion. Or it can be snared with the provisions regarding narcotics control regulated in Article 112 paragraph (1) of the Narcotics Law. Namely every person without rights or against the law of owning, storing, controlling, or providing Narcotics Group I is not a plant, the perpetrator can be subjected to a minimum imprisonment of 4 (four) years or a maximum of 12 (twelve) years and the least fine IDR 800 million and a maximum of IDR 8 billion. In the control of narcotics, there is a jurisprudence of the Decision of the West Sumatra High Court, that Bezit in a narcotics case must fulfill two elements, namely the power of an object and the willingness to own it. That is, if someone does not know how to bring narcotics and does not want to own the object, then the element of proof in Article 112 of the Narcotics Law is not fulfilled.

The threat of imprisonment that can be imposed on a child no later than 1/2 (one half) of the maximum threat of imprisonment for adults. That is, the criminal threat for children who are narcotics couriers is half of

the criminal threats contained in the Narcotics Law. For children who become couriers or narcotics intermediaries, it must be based on the mechanism regulated in the Child Protection Act and the Juvenile Justice System Law. Law enforcement for perpetrators under the age of age, there is a special provision called diversion, namely the transfer of settlement of child cases from the criminal justice process to a process outside of criminal justice.

Based on Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, at the level of investigation, prosecution, and examination of cases of children in the district court must be sought diversion. However, diversion can only be done on condition that in the case of a criminal offense being threatened with a prison sentence of less than 7 (seven) years and the act committed by the child is not a repeat of a criminal act.

According to Law Number 11 of 2012 concerning the Criminal Justice System of Children, diversion efforts are carried out to avoid and alienate children from the judicial process so as to avoid stigmatization of children who are dealing with the law and are expected to be able to return to the social environment properly. The diversion process is carried out through deliberations involving children and their parents / guardians, community counselors, and professional social workers, which is carried out with a restorative justice approach.

Article 3 of the SPPA Law also regulates the rights for children who are legally processed through criminal justice, including: being treated humanely by taking into account their needs according to their age; separated from adults; not sentenced to death or criminal for life; not arrested, detained or imprisoned, except as a last resort and in the shortest time; obtain justice in the face of an objective, impartial, and in a public hearing; not published identity; get education; and other rights in accordance with the provisions of the legislation.¹³

The view that the use of criminal law as a means of overcoming crimes cannot be attributed to the understanding that their use must still be subsidiary. That is, as long as the use of facilities outside the criminal justice system is seen to be more effective, the use of criminal justice should be avoided wherever possible. In addition, if criminal law will be used as a means to reach Indonesian people as a whole, then the humanistic approach must also be considered. This is important not only because the crime is essentially a humanitarian problem, but also because essentially the criminal law itself contains elements of suffering that can attack the most valuable interests or values for human life.¹⁴

Conceptually, crime prevention can be carried out either by using criminal justice (other judicial) or other means outside criminal justice (non-judicial). Efforts to

transfer the process from the judicial process to the non-judicial process in the handling of narcotics abuse by children, are basically an effort to solve narcotics abuse committed by children outside the criminal justice channel. That is, the transfer of the process from the judicial process to the non-judicial process in the handling of narcotics abuse by children, is basically an effort to avoid children from the application of criminal law and punishment.

Children need special legal protection when dealing with legal problems. Existing regulations have a number of weaknesses, these weaknesses are contained in Law Number 3 of 1997 concerning Juvenile Courts which threatens criminal prosecution when the child is in the court process. In addition, the protection of children who have problems with the law (ABH) has also been guaranteed in the Amanah Constitution of the Republic of Indonesia, namely Article 28 B Paragraph (2) of the 1945 Constitution 1945 which states that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination ". The high number of children held at LAPAS also encouraged the birth of policies in Indonesia, the data shows that "based on data from KPAI stated that in 2011 there were approximately 6271 children in 16 (sixteen) Correctional Institutions (LAPAS) spread throughout Indonesia. Not only that, there are negative effects of punishment in the form of dehumanization (decreasing human values), prisonization (the effect of learning evil) and stigmatization (bad stamp) are also a

¹³ <http://ftwlawfirm.com/>

¹⁴ recognizes- the law-law-office-news-staff-involving-a-bak / Barda Nawal Arief, 1994, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Semarang, Diponegoro University Publishing Agency, p. 41.

consideration in encouraging the birth of a diversion policy in Indonesia.¹⁵

Legal treatment for minors in the case of narcotics trafficking should receive serious attention. Law enforcers and process and decide must be sure that the decisions taken will be a strong basis for returning and regulating children towards a good future to develop themselves as citizens who are responsible for the life of the nation.

CLOSING

Conclusion

Crime prevention can be carried out either by using criminal justice (judicial) or other means outside of criminal justice (non-judicial). Efforts to transfer the process from the judicial process to the non-judicial process in the handling of narcotics abuse by children, are basically an effort to solve narcotics abuse committed by children outside the criminal justice channel. That is, the transfer of the process from the judicial process to the non-judicial process in the handling of narcotics abuse by children, is basically an effort to avoid children from the application of criminal law and punishment. Legal treatment for minors in the case of narcotics trafficking should receive serious attention. Law enforcers and process and decide must be sure that the decisions taken will be a strong basis for returning and regulating children towards a good future to develop themselves

¹⁵ Halim Palindungan Harahap, 2014, *Tinjauan Yuridis Sosiologis Terhadap Kebijakan Diversi Bagi Anak Dalam Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak*, UNNES Law Journal. P. 1

as citizens who are responsible for the life of the nation.

Recommendations

1. The need for joint efforts to overcome children as perpetrators of narcotics crime through increasing supervision of families, schools and the community.
2. The need for increased socialization of narcotics hazards both at school and in the community.

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