

The Criminal Judgment Process against Children as Narcotics Users

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Abstract.

This research aims to examine and analyze criminal law policies on the juvenile justice process as Narcotics users. In this paper, the author uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the discussion, it is concluded that the form of punishment in the form of action can be determined by the judge by looking at the point of view of protecting children's rights, where the judge views that children can change, correct their mistakes and become better in the future. Child users or narcotics addicts according to the law as perpetrators of narcotics crimes are the provisions of the law governing the imprisonment given to perpetrators of narcotics abuse. Then on the other hand, it can be said that the child who is the perpetrator of a narcotic crime is a victim, it is indicated by the provision that narcotics addicts can be sentenced to rehabilitation. Shifting the form of punishment from corporal punishment to action punishment is a depenalization process. Depenalization is an act that was originally threatened with a criminal offense and then this criminal threat is removed, but it is still possible to be prosecuted in other ways, for example through civil law or administrative law.

Keywords: Criminal; Justice; Narcotics.

1. Introduction

The Unitary State of the Republic of Indonesia is one of the big countries that prioritizes applicable legal provisions. The positive rule of law that applies in Indonesia is clearly an important component in building a safe, peaceful and peaceful life.¹As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, which has confirmed that Indonesia is a state of law, this phrase is contained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia.²This confirms that the implementation of the Indonesian state government must always be based on and in accordance with the will of the law. The fourth paragraph of the Preamble to the 1945 Constitution, which is the constitutional basis of this country, states that one of the goals of the state is to create general welfare and educate the nation's life.³This has the implication that public welfare is a constitutional ideal, accompanied by the

¹Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora) Jurnal Daulat Hukum: 3 (1), March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

²Majelis Permusyawaratan Rakyat Indonesia, (2015), *Undang-Undang Dasar Negara Republik Indonesia tahun 1945*, Jakarta: Sekretariat Jenderal MPR RI, p. 116.

³Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*, Jurnal Daulat Hukum: 3 (1), March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

growth of an intelligent Indonesian people who are able to lead the Indonesian nation as a sovereign and prosperous country.

One of the fields of law in order to maintain order and security for Indonesian citizens is criminal law.⁴Criminal law reform is an effort to orientate and reform criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlie social policies, criminal policies and law enforcement policies in Indonesia.⁵

In addition to the rule of law, Indonesia is also a country that upholds human rights, including children's rights, which are marked by guarantees for the protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations both national and international.⁶The concrete form of the Government in providing protection to everyone, especially to children as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law" and Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination".

Children are those who are not yet mature and who become adults due to certain mental, physical regulations are still immature.⁷The definition of the child itself when viewed further in terms of chronological age according to law can vary depending on the place, time and for what purposes, this will also affect the limits used to determine the age of the child.⁸According to the positive law of children interpreted as a person who is not yet an adult (*minderjarig*/person under age), a person who are underage or underage conditions (*minderjarig heid*/inferiority) or commonly referred to as a child who is under the supervision of a guardian (*minderjarige*).

Everyone who commits a crime will of course get a criminal sanction in the form of punishment, this can be in the form of a death penalty, imprisonment, confinement, or a fine. Giving punishment is very closely related to criminal responsibility where the person convicted must be able to account for his actions. Criminal liability must be in accordance with the principles of criminal law regarding criminal liability which reads no be punished if there are no mistakes (*geen straf zonder schuld actus non facit reum nisi mens sis rea*).⁹

Things that ease sentencing, are divided into three, namely, probation (*poeging*), assistance (*medeplectige*), and underage (*minderjarig*). Against children in conflict with the law, Act No. 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that for children who are threatened with imprisonment, the threat is reduced by of the main criminal threat intended for

⁴Saviera Chntyara, (2018), *Peranan Visum Et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Penganiayaan*, Fakultas Hukum, UMS, Surakarta, p 2.

⁵Barda Nawawi Arief, (2010), *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana, p. 29.

⁶Ari Yudistira and Widayati, *The Investigation Process of Prospective Children in Criminal Action*, Jurnal Daulat Hukum: 4 (1), March 2021, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13695/5374>

⁷Shanty Dellyana, (1988), *Wanita Dan Anak Di Mata Hukum*, Yogyakarta: Liberty, p. 50

⁸Abdussalam, (2007). *Hukum Perlindungan Anak*, Jakarta, Restu Agung, p.5

⁹Moeljatno, (2009), *Asas-Asas Hukum Pidana*, Jakarta, Reneka Cipta, p. 165

adults.¹⁰ Imprisonment does not mean that it is the most appropriate sanction for children, it should look at policy issues towards children to be even more important, especially when viewed from the point of view of criminology, that children who commit delinquency are motivated by influence from the environment.

From the things described above, the author's intention arises to establish the purpose of writing, namely reviewing and analyzing criminal law policies towards the juvenile justice process as Narcotics users.

2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method. The specifications of the writing were carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this paper, secondary data collection methods were used which were obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

3. Result and Discussion

3.1. Criminal law policy on juvenile justice processes as narcotics users

In positive law in Indonesia, a child is defined as a person who is not yet an adult (*minderjarig* / person under age), people who are under age / underage (*minderjarig heid* / inferiority) or commonly referred to as children who are under the supervision of a guardian (*minderjarig onder voordij*). The definition of the child itself, if reviewed further in terms of chronological age according to law, can vary depending on the place, time and for what purposes, this will also affect the limits used to determine the age of the child. We can see the difference in the understanding of children in each of the existing laws and regulations. For example, the definition of a child according to Act No. 4 of 1979 concerning Child Welfare is someone who has not reached the age of 21 years and has never been married.

Article 1 paragraph (3) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System states: "Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old suspected of committing a crime". However, different things are shown in the field of Constitutional Law, the right to vote in elections, for example, a person is considered to have been able to take responsibility for his legal actions if he has reached the age of 17 (seventeen) years.¹¹

The application of punishment to children often creates debate, because in this case it has very broad consequences, both regarding behavior and stigma in society and also within the child, Act No. 11 of 2012 concerning the Juvenile Criminal Justice System adheres to a double track system. What is meant by a double track system is a two-track system where in addition to regulating criminal

¹⁰Article 81 Paragraph (2) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

¹¹Nasir Djamil, (2013), *Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta, p.127

sanctions, it also regulates actions. Through the implementation of a double track system, the sanctions imposed will better reflect justice, both for perpetrators, victims, and the community. So that through a two-track system, judges can determine the imposition of sanctions against children that are appropriate and deserve to be held accountable by children in conflict with the law.¹²

Indonesia is currently carrying out the criminal law reform process. Criminal law reform includes reform of formal criminal law, material criminal law and criminal law enforcement. These three areas of law are jointly or integrally improved so that there are no obstacles in their implementation.¹³ One of the triggers for changes in criminal law is the advancement of technology and information.¹⁴ As part of the criminal law policy, the criminal law reform essentially aims to make criminal law better in accordance with the values that exist in society.¹⁵

What is very interesting in the law on narcotics is the judge's authority to pass a sentence on someone who is proven to be a narcotics addict for rehabilitation. Implicitly, this authority recognizes that narcotics addicts, apart from being perpetrators of criminal acts, are also victims of the crime itself, which in terms of victimology is often referred to as self-victimization or victimless crime. The description in the article focuses on the power of judges in deciding narcotics cases. Unfortunately this formula is not effective in reality. The trials of narcotics addicts mostly end in imprisonment and not rehabilitation sentences as stipulated in the law.¹⁶

Children who abuse narcotics, both dealers and users, have stipulated provisions in Act No. 35 of 2009 concerning Narcotics, where children who abuse their narcotics are victims of the games of adults who want to get big profits by using children under age. If traced, it is impossible for minors to design a drug distribution system in a very secret, neat and sophisticated way.

Shifting the form of punishment from corporal punishment to action punishment is a depenalization process. Depenalization is an act that was originally threatened with a criminal offense and then this criminal threat is removed, but it is still possible to be prosecuted in other ways, for example through civil law or administrative law. In the depenalization process, there is a tendency to submit the disgraceful or anti-social act to social reactions only or to medical action institutions. Acts that include juvenile delinquency are handled outside the criminal justice process. Likewise, adultery with socio-economic considerations becomes a non-criminal act with a depenalization process.

Depenalization occurs because of the development or shift in legal values in people's lives that affect the development of legal values in criminal law norms. The act is still a disgraceful act, but it does not deserve to be subject to heavy

¹²Nashriana, (2013), *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, Jakarta, Rajawali Perss, p 56.

¹³Lilik Mulyadi, (2007), *Kapita Selekta Hukum Pidana, Kriminologi Dan Victimologi*, Jakarta: Djambatan, p. 38

¹⁴Yesmil Anwar & Adang, (2008), *Pembaharuan Hukum Pidana*, Jakarta: Grasindo, p.1

¹⁵Tongat, (2002), *Pidana Kerja Sosial dalam Pembaharuan Hukum Pidana Indonesia*, Jakarta: Djambatan, p. 20

¹⁶Megawati Marcos. (2014), *Tinjauan Yuridis Tentang Pemidanaan Terhadap Pecandu Narkotika*. Yogyakarta: Fakultas Hukum Atmajaya, p. 4

criminal sanctions, it is more appropriate to be subject to light criminal sanctions or actions.

The reason for determining the depenalization of narcotics addicts and victims is because they are considered sick people so they need to receive treatment by providing therapy and drugs to recover. For victims of narcotics abuse, in fact they are not aware of what they have done because they did the act because of the persuasion of others so that they need to be saved by being rehabilitated, so as not to fall further into the severity of the effects of narcotics.

The form of depenalization given by the judge to children who are perpetrators of narcotics crimes can be in the form of actions where positive criminal law is also known as the type of sanctions in the form of actions listed in Article 82 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, including:

- Return to parent/guardian;
- Submission to someone;
- Treatment in mental hospitals;
- Treatment in social welfare organization;
- Obligation to attend formal education and/or training held by the government or private bodies;
- Revocation of driving license;
- Repairs due to criminal acts.¹⁷

The form of punishment in the form of this action can be determined by the judge by looking at the point of view of the protection of children's rights, where the judge views the child can change, correct his mistakes and become better in the future. Act No. 35 of 2009 concerning Narcotics has given birth to a legal reform, where in the provisions of this law there is a decriminalization of perpetrators of narcotics abuse. Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation.

Act No. 35 of 2009 concerning Narcotics has given different treatment to children who abuse narcotics, before this law came into effect there was no difference in treatment between users of dealers, dealers, and narcotics producers. Users or addicts of narcotics on the one hand are perpetrators of criminal acts, but on the other hand are victims. Child users or narcotics addicts according to the law as perpetrators of narcotics crimes are the provisions of the law governing the imprisonment given to perpetrators of narcotics abuse. Then on the other hand, it can be said that the child who is the perpetrator of a narcotic crime is a victim, it is indicated by the provision that narcotics addicts can be sentenced to rehabilitation.

Rehabilitation is a semi-closed facility, meaning that only certain people with special interests can enter this area. Narcotics rehabilitation is a place that provides skills and knowledge training to avoid narcotics.¹⁸

According to Act No. 35 of 2009, there are two types of rehabilitation, namely:

¹⁷Article 82 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

¹⁸Herman Soeparman, (2000), *Narkoba Telah Merubah Rumah Kami Menjadi Neraka*, Jakarta: Departemen Pendidikan Nasional, p.37

- Medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence;
- Social rehabilitation is a process of integrated recovery activities, both physically, mentally and socially, so that former drug addicts can return to carrying out their social functions in community life.

According to the Circular Letter of the Supreme Court Number 04 of 2010, to impose the length of the rehabilitation process, so that expert information is required and as a standard in the therapy and rehabilitation process, namely the detoxification and stabilization program for 1 (one) month, the primary program for 6 (six) months and the re-entry program is 6 (six) months long.

Special protection for children in conflict with the law is carried out through humane treatment in accordance with children's rights, provision of special assistant officers from an early age, provision of special facilities and infrastructure, imposition of appropriate sanctions for the right interests for the best interests of children, monitoring and registration continuously on the development of children in conflict with the law, guarantees to maintain relationships with parents and families as well as protection from media coverage.

4. Conclusion

The form of punishment in the form of action can be determined by the judge by looking at the point of view of the protection of children's rights, where the judge views that children can change, correct their mistakes and become better in the future. Act No. 35 of 2009 concerning Narcotics has given birth to a legal reform, where in the provisions of this law there is a decriminalization of perpetrators of narcotics abuse. Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. Act No. 35 of 2009 concerning Narcotics has given different treatment to children who abuse narcotics, before this law came into effect there was no difference in treatment between users of dealers, dealers, and narcotics producers. Users or addicts of narcotics on the one hand are perpetrators of criminal acts, but on the other hand are victims. Child users or narcotics addicts according to the law as perpetrators of narcotics crimes are the provisions of the law governing the imprisonment given to perpetrators of narcotics abuse. Then on the other hand, it can be said that the child who is the perpetrator of a narcotic crime is a victim, it is indicated by the provision that narcotics addicts can be sentenced to rehabilitation.

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