



Implementation of prison criminal on children of narcotics abuse

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Abstract

Narcotics abuse by children is a behavioral deviation or unlawful act. The increase in narcotics abuse among the younger generation is very dangerous for the nation's future generations who do not yet have legal protection against perpetrators and victims of narcotics abuse who are still minors. The Child Protection Law and the Children's Criminal Justice System Law regulate the legal protection that must be given to children who are against the law. This research uses a type of empirical juridical research which is field legal research. Based on the results of the research, it was concluded that all legal processes convicted of child narcotics have not been carried out in accordance with the applicable legal provisions, the reason is that the imposition of criminal sanctions on children who abuse narcotics has not accommodated the objectives of punishing children.

Keywords: Narkotika, penyalahguna narkotika, anak

Introduction

Crime is behavior that is prohibited by the state, because it is an act that is detrimental to the state and to this act the state reacts with punishment as the ultimate remedy (Ultimum Remedium). Crime has also spread to children. It is not only children who are victims of violence that occurs against children, what is most worrying now is when children themselves are the perpetrators of criminal acts.

Deviant behavior committed by teenagers in the sense of juvenile delinquency is an act or action carried out by someone who is not yet an adult who deliberately violates the law and the child himself realizes that his actions can be subject to sanctions or punishment (criminal). Juvenile delinquency is one of the government's urgent problems in dealing with criminal acts in Indonesia.

Basically, children are an inseparable part of the survival of humans, nations, and countries. In the Indonesian constitution, children have a strategic role which is explicitly stated that the state guarantees every child's right to survival, growth and development and the right to protection from violence and discrimination, as explained in the 1945 Constitution Article 28 B paragraph (2). Children are an important element of the state, so the crime committed by children was that the Government established Law Number 11 of 2012 concerning the Juvenile Criminal Justice System with consideration

- a. That children are a trust and gift from Almighty God who have the dignity and worth of being whole human beings;
- b. That to maintain honor and dignity, children have the right to receive special protection, especially legal protection in the justice system;
- c. Whereas Indonesia as a State party to the Convention on the Rights of the Child which regulates the principles of legal protection for children has an obligation to provide legal protection for children in conflict with the law;
- d. Whereas Law Number 3 of 1997 concerning juvenile courts is no longer in accordance with the development and legal needs of society because it has not comprehensively provided protection for children in

conflict with the law, so it needs to be replaced with a new law;

- e. That based on the considerations as intended in letters a, b, c, and d, it is necessary to form a law regarding the juvenile justice system.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) emphasizes the definition of children in Article 1 Number (3) which states that: "Children who are in conflict with juvenile law are children who are 12 (twelve) years, but not yet 18 (eighteen) years of age who is suspected of committing a crime. The law on SPPA looks at the child's side of the actions he commits, if the child commits a crime before the child is 12 (twelve) years old, it is not categorized as a child in conflict with the law so from a legal perspective he cannot be held responsible, on the contrary, if he has reached the age of 12 (twelve) years to 18 (eighteen) years can be held responsible for their actions. In the SPPA Law, children in conflict with the law are divided into

1. Children in conflict with the law are children who conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts (Article 1 Number 2 of the SPPA Law);
2. Children who are victims of criminal acts, hereinafter referred to as child victims, are children under 18 (eighteen) years of age who experience physical, mental and/or economic loss caused by criminal acts (Article 1 point 4 of the SPPA Law);
3. Children who are Witnesses to Crimes, hereinafter referred to as Child Witnesses, are children under 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution, and examination at a court hearing regarding a criminal case that has been heard, seen and/ or experienced it himself (Article 1 number 5).

According to Article 1 number 7 of Law no. 11 of 2012 states that diversion can be interpreted as transferring the resolution of children's cases from the criminal justice process to a process outside of criminal justice. Restorative

Justice according to the general explanation of Law no. 11 of 2012 is a Diversion process, namely all parties involved in a particular criminal act together to overcome the problem and create an obligation to make things better by involving victims, children and the community in finding solutions to repair, reconcile and reassure a heart that is not based on vengeance. Restorative Justice and Diversion are the most important differences between Law no. 11 of 2012 with Law no. 3 of 1997.

Based on the provisions of Article 5 paragraph (1) of the SPPA Law, the Juvenile Criminal Justice System is obliged to prioritize a Restorative Justice approach. Meanwhile, Article 5 paragraph (2) of the SPPA in question includes

1. Criminal investigations and prosecutions of children are carried out in accordance with the provisions of laws and regulations;
2. Juvenile trials conducted by courts within the general justice environment; And;
3. Guidance, mentoring, supervision and/or assistance during the process of carrying out a crime or action and after undergoing a crime or action.

Article 59 of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection, states "The government and other state institutions are obliged and responsible to provide special protection to children in emergency situations, children in conflict with the law, children from minority and isolated groups, children exploited economically and/or sexually, children who are trafficked, children who are victims of abuse of narcotics, alcohol, psychotropics and other addictive substances (drugs), children who are victims of kidnapping, sales and trafficking, children who are victims of physical violence and/or mental illness, children with disabilities, and children victims of abuse and neglect." In the criminal justice system, children must be diverted.

Paying attention to the meaning of diversion, it is known that every case of a child in conflict with the law must first be resolved through non-litigation channels. This is where law enforcers, environmental and religious leaders can actually play a role in providing forms of resolution of cases of children in conflict with the law that can be carried out in accordance with religious values and local customs. Traditional habits are considered to provide positive value in resolving children's cases in a dignified manner and can create satisfaction for the perpetrator, victim and the surrounding environment. Based on Article 6 of the SPPA Law, diversion has a purpose

- a. Achieve peace between victims and children;
- b. Resolving children's cases outside the judicial process;
- c. Preventing children from deprivation of liberty;
- d. Encourage the public to participate; and;
- e. Instill a sense of responsibility in children.

Imprisonment is still the primary choice for judges. It should be a last resort, but in fact it is still the prima donna used by law enforcement. If we trace it in the Criminal Code (KUHP), "criminal crime is the type of criminal sanction that is most often stipulated in criminal legislation.

Prison as a last resort is regulated in various international and national laws and regulations, including Article 37 (b) KHA, point 13 (1) Beijing Rules, point 17 The Riyadh Guidelines, Number 6 (1), The Tokyo Rulers, Point 1 Juvenile Deprivation Liberty/Havan Rules. Article 66

paragraph (4) of the Law. 39 of 1999 concerning Human Rights, Article 16 paragraph (3) of the Child Protection Law, Article 3 letter g of the SPPA Law, and other regulations.

Research Method

The type of research used in this research is juridical-empirical, namely research by conducting a comprehensive study by conducting direct observations and interviews at the research location. To complete this research, a literature review was also carried out, such as reviewing several laws and regulations related to the problem under study which became secondary material in this research.

Empirical legal research or what is called another term is sociological legal research and is also called field research. This empirical legal research starts from primary data, namely data obtained directly from the community as the first source through field research, which is carried out through observations and interviews, observation and distribution of questionnaires, so the definition of this empirical juridical research is a legal research method that seeks to see the law in a real sense or can be said to see how the law works in society.

In this research, primary and secondary legal materials were used. Primary legal materials are all legal rules that are formed and/or made officially by a state institution, and/or government bodies. In further detail, included in this primary legal material are all products of the legislative body, namely products called laws. The approach method in this research was carried out using a socio-legal approach, which is a study of law using legal science and social science approaches. In principle, sociolegal studies are legal studies, which use social science methodology in a broad sense.

Discussion

Application of Prison Sanctions for Children as Narcotics Abusers. The imposition of criminal penalties on children often gives rise to debate, because this has very broad consequences both in terms of behavior and stigma among society and within children. UU no. 11 of 2012 The Juvenile Criminal Justice System adopts a double track system, namely a two-track system that regulates criminal actions and sanctions. By implementing a two-track system, the sanctions imposed will better reflect justice, both for the perpetrator, victim, and society. So that through a two-track system, judges can determine appropriate and appropriate sanctions for children who conflict with the law.

In Law article 1 paragraph (3) 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 years old, but not yet 18 years old, who are suspected of committing a criminal act." Article 69 paragraph (2) also confirms that "children who are not yet 14 (fourteen) years old can only be subject to action." Determining the age limit for children in relation to criminal responsibility who can be brought before the court is 12 years to 18 years in accordance with the Constitutional Court decision no. 1/PUUVIII/201/021 and as stipulated in Law no. 11 of 2012 concerning SPPA.

There are two categories of child behavior that make children must deal with the law, namely Offense status (child delinquent behavior which if committed by an adult is not considered a crime, such as disobeying, skipping school,

or running away from home), and Juvenile Delinquency (child delinquency behavior which if committed by an adult is considered a crime or violation of the law).

In connection with the provisions for criminal sanctions against children as perpetrators of narcotics crimes, in Article 71 of the SPPA Law (Juvenile Criminal Justice System) there are provisions for criminal sanctions that can be imposed on children who are in conflict with the law, namely

The main punishment is

- a. Warning penalty;
- b. Sentence with conditions; coaching outside the institution, community service and supervision;
- c. Work training;
- d. Coaching within the institution;
- e. Prison

Additional punishment, in the form of

- a. Confiscation of profits obtained from criminal acts.
- b. Fulfillment of customary obligations.

In essence, all forms of legal handling of children who face narcotics abuse problems must be carried out by prioritizing the best interests of the child. Therefore, the decision taken in this case must be fair and proportional, not solely based on legal considerations but also considering other factors such as environmental conditions, the child's social status, and family conditions. Therefore, the legal treatment of minors in narcotics trafficking cases deserves serious attention. Children as victims of narcotics abuse should not be used as a basis for treating children discriminatorily before the law. The role of law enforcement in processing and making decisions must be to ensure that the decisions taken can restore and lead children towards a better future for themselves as citizens who are responsible for the life of the nation. This is of course a very serious problem, because if left unchecked, children can fall into the illegal narcotics business.

Freedom and human rights for children are one form of legal protection for children that can be carried out (fundamental rights and freedoms of children). Legal protection of children's rights is intended to provide protection for needs related to child security. A protective form of children's human rights, namely that children in court will be given legal protection. In the convention on children's rights, children's rights can generally be grouped into 4 (four) categories, namely the right to survival, the right to protection (Protection Rights), the right to growth and development (Development Rights), and the right to participate (Participation Rights).

Legal protection of children's rights aims to protect various interests related to children's welfare. One form of legal protection for children's human rights, namely legal protection for children who are in the juvenile criminal justice system. The juvenile criminal justice system can be interpreted as all elements of the criminal justice system, which are involved in handling cases of juvenile delinquency. First, the police as a formal institution when delinquent children first encountered the justice system. Second, the prosecutor and parole institution will determine whether the child will be released or processed into juvenile court. Third, juvenile court, the stage when children will be placed in options, starting from being released to being

placed in a penal institution. Fourth is the institution of punishment.

The juvenile justice system involves investigating and resolving all cases that involve the best interests of the child. This includes all actions of the police, prosecutors, judges, and other officials, which must be based on the principle of the best interests of the child. Juvenile justice includes all functions of investigating and resolving children's cases, starting from police investigations, prosecution by prosecutors, examinations by judges in court, and sentencing by correctional institutions, of course all of these functions are carried out taking into account the interests of children.

In the juvenile justice system in Indonesia which is based on the SPPA (Juvenile Justice System), every child who commits a criminal act is allowed to be tried like the perpetrators of other criminal acts. Drug addicts, including children, can be prosecuted in the formal criminal justice system. The position of children as immature parties and still vulnerable affects the child's psychology and future. Because the stigmatization of drug addicts is very bad in Indonesia. Perpetrators are viewed by society as criminals who commit crimes and should be punished severely for dangerous acts. It is even said that it is too extreme that crimes committed by children should be called crimes, because children are basically mentally unstable and immature, so they do not yet have firm decisions about their behavior and actions. This cannot be called a crime, but criminals are due to their unstable mental state, so they do not understand and realize the consequences of their actions. Acts of delinquency committed by children are a manifestation of adolescent puberty without any intention of harming other people as implied by crimes listed in the Criminal Law (KUHP) where the perpetrator must be aware of the consequences of his actions, and the perpetrator is able to take responsibility his actions. Thus, it is inappropriate if children's delinquency is referred to as pure crime.

It is known that on average, juvenile narcotics convicts are caught as dealers and users. They operate individually and in groups acting as intermediaries. During the arrest process, the police also deliberately inform the family of the reasons for the arrest, this is because the family has the right to know and is responsible for their child's actions. After being arrested and interviewed, the convicted child will be decided whether to be rehabilitated or placed in a special children's cell based on the legal decision given.

If there are children who use or consume narcotics, they will go through a legal process which will prove that the child is an abuser or just a victim of narcotics abuse. If you can prove that the child is indeed a victim of abuse, then he should undergo medical rehabilitation and social rehabilitation. Rehabilitation is one of the protections outlined in the SPPA Law to protect children. This rehabilitation is also only specifically for children who have been proven to be abusing narcotics because according to the law the child is obliged to undergo rehabilitation. The child will be returned to the family because he is still not an adult to face the law and is still in his educational period, so arrests are made as a last step with a short detention period.

Conclusion

Based on the results of the research, it was concluded that all legal processes convicted of child narcotics have not

been carried out in accordance with applicable legal provisions, the reason is that the imposition of criminal sanctions on children who abuse narcotics has not accommodated the objectives of punishing children. The application of imprisonment for children who abuse narcotics often gives rise to debate among the community, because in this case it has very broad consequences both regarding behavior and stigma from society and the child's identity. This raises pros and cons among the community. On the one hand, there are many parties who think that punishing children is unwise, but there are some who think that punishing children is important so that the child's bad behavior does not persist into adulthood, meaning that it has a deterrent effect on the child. Imprisoning children who abuse narcotics is an *ultimum remedium* and not the main criminal option.

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