

Legal Protection For Children As Victims Used As Narcotics Couriers

Pangiutan Tondi Lubis
University Of Muhammadiyah Sumatera Utara
Email: pangiantondilubis@gmail.com

ABSTRACT

Law Number 35 of 2009 concerning Narcotics, explains in general about criminal sanctions for drug intermediaries (couriers) but does not specifically regulate criminal sanctions for children who become drug couriers. However, basically, perpetrators of drug trafficking involving children as drug couriers are still subject to the articles as regulated in the Narcotics Law but without ignoring the special provisions regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Diversion can only be implemented for crimes with a prison sentence of less than 7 (seven) years. Legal treatment for minors in drug trafficking cases should receive serious attention. Law enforcers and those processing and deciding must be sure that the decisions taken will be a strong basis for returning and managing children towards a good future to develop themselves as citizens who are responsible for the life of the nation.

Keywords: Legal Protection, Children, Victim, Narcotics.

A. Introduction

Drug abuse cases are increasing. This is proven by the almost daily press coverage from newspapers and electronic media about smuggling, illegal trade, arrests and detentions related to drug abuse issues. The meaning of drug abuse is an act of using narcotics deviantly or unintentionally. So the act is against the law and is subject to criminal penalties. Until now, there has been a lot of research on factors that can influence drug abuse, including: dependency factors, the occurrence of dependency is as a result of anesthesia. In this case, it is related to subjective feelings of pleasure as a direct result of drug users, the pain that arises from stopping drug use can encourage so that they are not aggressive and easy to interact socially. The emergence of symptoms similar to drug withdrawal when experiencing or witnessing a situation related to drug use. Sociological factors, this factor views that family

members easily feel that they have faced life's challenges so that there is no patience and enough time to accept the concept of religion, morals, education and others, but are accepted with an attitude of disbelief whether they can solve their life problems. Seeing a bleak future encourages people to take shortcuts in the form of drug use. Drug abuse disorders can arise due to the process of opposing political systems or values that have been established and can also be a form of resistance to authority figures (parents) through drugs as an effort to achieve safer and more certain conditions.¹

Children are a mandate and gift from God Almighty, in whom inherent dignity and worth as a whole human being. Therefore, children also have human rights that are recognized by nations in the world and are the foundation for freedom, justice, and peace throughout the world. Protection of children is very important, considering that children are the next generation of the nation. For this reason, legislation is needed that protects children from various criminal acts, namely Law Number 35 of 2014 Amendment to Law Number 23 of 2002 Concerning Child Protection. The purpose of this law itself is to protect children's rights from all kinds of criminal acts. Drug abuse no longer looks at age, from children, adolescents, adults to even the elderly are not free from the trap of drug abuse. It is estimated that around 1.5 percent of the total population of Indonesia are victims of drug abuse. The problem of drug trafficking is also no less worrying, because it does not only occur in big cities but also spreads to remote areas of Indonesia. In connection with the very large population of Indonesian people, approximately reaching 240,000,000 (two hundred and forty million) people, Indonesia is a potential market for illegal drug trafficking. To deceive the authorities, it is not uncommon for drug dealers to use minors as couriers for these illegal drugs. Lack of knowledge about narcotics, and the inability to refuse and fight back make minors the target of drug dealers to distribute narcotics widely and

¹ M. Arif, *Membendung Ancaman Narkoba pada Generasi Muda Melalui Partisipasi Masyarakat*, Pustaka Sinar Harapan, Jakarta, 2001, Hal. 45

covertly. This problem is certainly a very serious problem, because it can lead minors into the illegal drug business.

Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics states that importing, exporting, producing, planting, storing, distributing, and using narcotics without strict control and supervision, and in conflict with applicable laws and regulations is a crime. The narcotics law also states that narcotics are a crime because they are very detrimental and constitute a very great danger to humans, society, nation, and state as well as the national resilience of Indonesia. According to Bagir Manan, "Children in the criminal law field are treated as 'little adults', so that all of their case processes except in correctional institutions are carried out the same as adult cases. The only different treatment is during the examination in court. Trials for children's cases are conducted in private (Article 153 paragraph (3) of the Criminal Procedure Code) and the officers (judges and prosecutors) do not wear gowns. All of this is related to the physical, mental, and social interests of the child concerned."²

B. Research Methods

A research cannot be said to be research if it does not have a research method.³ Research methods are one of the factors of a problem that will be discussed.⁴ The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific.

C. Analysis And Discussion

1. Children's Rights and Obligations in Criminal Law

² Bagir manan, *Perlindungan Hukum Bagi Anak di Indonesia*, Rajawali Pers, Jakarta, 2011, Hlm. 3

³ Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

⁴ Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.

Children as individuals are very unique and have distinctive characteristics. Although they can act based on their own feelings, thoughts and will, it turns out that the surrounding environment has a significant influence in shaping a child's behavior. For this reason, guidance, coaching, and protection from parents, teachers, and other adults are very much needed by a child and the child's obligations. Moreover, in fulfilling their rights, a child cannot do it alone because their abilities and knowledge are still limited. In the Indonesian Constitution, the 1945 Constitution of the Republic of Indonesia as the highest legal norm has outlined that "every child has the right to survival, growth, and development and has the right to protection from violence and discrimination." It can be interpreted that the position and protection of children's rights are important things that must be further explained and implemented in everyday reality.⁵

Efforts to protect children's rights in Indonesia have been accommodated in the 1945 Constitution of the Republic of Indonesia Article 28B paragraph (2) as mentioned above, also in Law Number 39 of 1999 concerning Human Rights, and Law Number 23 of 2002 concerning Child Protection. In the convention on the rights of the child, children's rights can generally be grouped into 4 (four) categories, including: a). The right to survival, namely the rights to preserve and maintain life and the right to obtain the highest standard of health and the best possible care; b). The right to protection, namely the rights in the convention on the rights of the child which include the right to protection and discrimination, acts of violence and neglect for children who do not have families for refugee children; c). The right to grow and develop (Development Rights) are the rights of children in the convention on the rights of the child which include all forms of education (formal and non-formal) and the right to achieve a standard of living that is adequate for the physical, mental, spiritual, moral and social development of the child (the right of standar of living). d). The right to participate (Participation Rights), namely the rights of children which include the right to express

⁵ M. Nasir Djamil, *Anak Bukan Untuk Dihukum*, (Jakarta: Sinar Grafika, 2013), h., 12

opinions in all matters affecting the child (the right of a child to express her/his views freely in all matters affecting the child). The right to participate is the child's right regarding the child's fundamental cultural identity, childhood and the development of his/her involvement in the wider community.

2. Legal Protection for Children Exploited by Adults as Drug Couriers in the Juvenile Criminal Justice System

The application of criminal sanctions against children often causes debate, because in this case it has very broad consequences both concerning behavior and stigma in society and also in the child, but with the issuance of Law Number 11 of 2012 concerning the juvenile criminal justice system which has been in effect since July 30, 2014, the application of criminal sanctions is more fostering and protective of children, compared to Law Number 3 of 1997 concerning juvenile courts which is no longer relevant because it is not in accordance with the development of the times. Law Number 11 of 2012 concerning the juvenile criminal justice system adopts a double track system. What is meant by a double track system is a two-track system where in addition to regulating criminal sanctions it also regulates actions. Through the application of a two-track system, the sanctions imposed will better reflect justice, both for the perpetrator, the victim, and the community. So in the author's opinion, through a two-track system, judges can determine the imposition of sanctions on children that are appropriate and worthy of being accounted for by children in conflict with the law. In general, the imposition of criminal sanctions on lawbreakers is often considered the goal of criminal law. Therefore, if the offender has been brought to trial and then given a criminal sanction, then the legal case is considered to have ended. This view has positioned justice in criminal law and the enforcement of criminal law as criminal sanctions as threatened in the articles that have been violated.

The punishment that is commonly applied based on the Criminal Code, does not educate children to be better, but rather worsens the condition and can increase the level of child crime. The application of punishment to children based on Law Number

11 of 2012 concerning the juvenile criminal justice system is a basis for imposing sanctions on children who commit crimes. Children who become drug couriers, Law Number 35 of 2014 concerning narcotics does not specifically regulate the provisions of criminal sanctions for children, but basically a child who commits a narcotics crime as a perpetrator of illicit drug trafficking, namely a child who becomes a courier to carry out a process of illicit drug trafficking, is still subject to the articles as stipulated in the criminal provisions stipulated in the narcotics law but does not override the special provisions stipulated in Law Number 11 of 2012 concerning the juvenile criminal justice system. Law Number 11 of 2012 does not follow the provisions of criminal sanctions contained in Article 10 of the Criminal Code but creates sanctions separately.

In the prevailing laws and regulations in Indonesia, narcotics crimes are classified as special crimes because they are not mentioned in the Criminal Code, the regulations are also special as regulated in Law Number 35 of 2009 concerning Narcotics. The following are the articles that apply to children who qualify as narcotics couriers, namely: Article 114 of Law Number 35 of 2009 concerning Narcotics. (1) Any person who without rights or against the law offers for sale, sells, buys, receives, acts as an intermediary in the sale and purchase, exchanges, or delivers Class I Narcotics, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah). (2) In the case of an act of offering for sale, selling, buying, acting as an intermediary in buying and selling, exchanging, handing over, or receiving Class I Narcotics as referred to in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks or in non-plant form weighing 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

Article 115 of Law Number 35 of 2009 concerning Narcotics. (1) Any person who without right or against the law brings, sends, transports, or transits Class I Narcotics shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah). (2) In the case of the act of bringing, sending, transporting, or transiting Class I Narcotics as referred to in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks weighing more than 5 (five) grams, the perpetrator shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

Article 119 of Law Number 35 of 2009 concerning Narcotics. (1) Any person who without right or against the law offers for sale, sells, buys, receives, acts as an intermediary in the sale, purchase, exchange, or hand over Class II Narcotics, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah). (2) In the event that the act of offering for sale, selling, buying, receiving, acts as an intermediary in the sale, purchase, exchange, or hand over Class II Narcotics as referred to in paragraph (1) weighs more than 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

There is a view that the use of criminal law as a means of overcoming crime cannot be ignored. with the understanding that its use must remain subsidiary. This means that as long as the use of means outside the criminal justice system is considered more effective, then the use of criminal justice should be avoided as much as possible. In addition, if criminal (law) is to be used as a means to achieve a complete Indonesian

human being, then a humanistic approach must also be considered. This is important not only because crime is essentially a humanitarian problem, but also because in essence criminal law itself contains elements of suffering that can attack the most valuable interests or values for human life.

D. Conclusion

It should be noted that the determination of the age limit for children in relation to criminal responsibility that can be brought before the court is 12 (twelve) years to 18 (eighteen) years in accordance with the Constitutional Court decision No. 1/PUU VIII/201/021 and as stipulated in Law Number 11 of 2012 concerning the juvenile criminal justice system. Article 69 paragraph (2) also confirms that "children who are not yet 14 (fourteen) years old can only be subject to action in the form of returning them to their parents/guardians or including them in education, coaching and guidance programs at agencies that handle social welfare, both at the central and regional levels for a maximum of 6 (six) months. So if a child who becomes a drug courier and is proven to have violated Law Number 35 of 2009 concerning narcotics, is still in the age category of 12 (twelve) years to 13 (thirteen) years, then the judge can only impose sanctions on the child in accordance with Article 82 of Law Number 11 of 2012 concerning the juvenile criminal justice system. While those aged 14 (fourteen) years to 18 (eighteen) years can be subject to criminal sanctions as regulated in Law Number 11 of 2012 concerning the juvenile criminal justice system.

Law Number 35 of 2009 concerning Narcotics, explains in general about criminal sanctions for drug intermediaries (couriers) but does not specifically regulate criminal sanctions for children who become drug couriers. However, basically, perpetrators of drug trafficking involving children as drug couriers are still subject to the articles as regulated in the Narcotics Law but without ignoring the special provisions regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Diversion can only be implemented for crimes with a prison sentence of less than 7 (seven) years. Legal treatment for minors in drug trafficking cases should

receive serious attention. Law enforcers and those processing and deciding must be sure that the decisions taken will be a strong basis for returning and managing children towards a good future to develop themselves as citizens who are responsible for the life of the nation.

References

- Bagir manan, *Perlindungan Hukum Bagi Anak di Indonesia*, Rajawali Pers, Jakarta, (2011).
- Ismail Koto, “Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme”, *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021).
- Ida Hanifah, Ismail Koto, “Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19”, *Jurnal Yuridis* 8.1, (2021).
- M. Arif, *Membendung Ancaman Narkoba pada Generasi Muda Melalui Partisipasi Masyarakat*, Pustaka Sinar Harapan, Jakarta, 2001.
- M. Nasir Djamil, *Anak Bukan Untuk Dihukum*, (Jakarta: Sinar Grafika, 2013).