

IMPLEMENTATION OF CRIMINAL SANCTIONS AGAINST PERPETRATORS OF DRUG ABUSE IN CHILDREN**Imah Kardita, Johana Melisa Tobing, Jesika Fatma Sari, Salsa Deviana Puspita Sari**

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Abstract

Drug abuse by children is a deviation of behavior or unlawful acts. In the Child Protection Law and the Juvenile Criminal Justice System Law, legal protection must be provided to children who are in conflict with the law. The purpose of this study is to analyze how the implementation of criminal sanctions against perpetrators of drug abuse in children. This research uses the theory of liberalism on the basis of freedom and human rights (HAM). As a vulnerable party in the criminal justice process, even though undergoing the judicial process, children must still receive protection. Based on the interview between the author and the investigator, it can be concluded that all legal processes of convicted drug convicts in children have been running with applicable legal provisions, it's just that there is one thing that should be an important point that is needed during the legal process. Then if a minor violates the law, the thing that must be done is to give sanctions so that the child can realize that the actions he has done are wrong and can cause violations of the law. The involvement of minors in narcotics is punishable with a crime based on the Narcotics Law "No. 35 of 2009", in which case minors are entitled to legal protection under the Criminal Code and Law "No. 11 of 2012". Where a child will get a dry punishment that is returned to his parents or six months of job training at the Lampung Provincial Social Service

Keywords: Implementation ; juvenile ; narcotics ; crimes

INTRODUCTION

Law enforcement against drug crimes has been carried out by many law enforcement officials and has received many judges' rulings in court hearings. This law enforcement is expected to be able to act as an antidote factor against the spread of drug or narcotics trafficking, but in reality the more intensive law enforcement is carried out, the more the circulation of narcotics trafficking increases. Narcotics crime based on Law Number 35 of 2009 Isnaini, (2017), Providing criminal sanctions is quite severe, in addition to being subject to corporal punishment and also subject to fines, but in reality the perpetrators are actually increasing. This is because the factor of imposing criminal sanctions does not have an impact or *deterrent effect* on the perpetrators.

The criminal act of misuse of narcotics (*gequalificeerde diefstal drugs*) as stipulated in Law Number 35 of 2009 concerning Narcotics (Sari & Anggalana, 2022). The offender can account for all his mistakes. Criminal acts of drug abuse

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(*gequalificeerde diefstal drugs*) still often occur in the Republic of Indonesia. The juridical basis governing the criminal act of drug abusers (*gequalificeerde diefstal drugs*) is Law Number 35 of 2009 concerning Narcotics. The social phenomenon that occurs according to Wirjono Prodjodikoro that a drug abuser is caused by several factors, including the negative impact of globalization, communication and information, advances in science and technology, lifestyle changes that have brought social changes in people's lives.

Article 113 of Law Number 35 of 2009 concerning Narcotics of the Republic of Indonesia states: "any person who without rights or against the law produces, imports, exports, or distributes class 1 narcotics, shall be punished with a prison sentence of not less than 5 (five) years and a maximum of 15 years (fifteen) years and a fine of at least IDR 1,000,000,000 (one billion rupiah) and a maximum of IDR 10,000,000,000 (ten billion rupiah)". Drug dealers often use and use minors as liaisons when transporting drugs from one region to another (Hasan & Firmansyah, 2020; Zanah, Silpiani, & Hasan, 2023).

There is an aspect or reason between, the provision of wages in return for a service that is so large and the lack of knowledge related to drugs that causes minors to be so lightly targeted for drug dealers in circulating drugs thoroughly and privately (Gukguk & Jaya, 2019). The role or participation of children in a drug crime, as a dealer or liaison between the dealer and also the user of prohibited goods, this certainly triggers feelings of worry and anxiety about the activities carried out by the child (Subandri & Widyarsono, 2021). Melihat anak merupakan generasi selanjutnya dan juga landasan harapan orang tua dan kerabat bahkan negara Indonesia kedepannya. Kondisi ini lah yang menyebabkan kemampuan seorang anak menjadi lemah dan berkurang sehingga mampu mempengaruhi mekanisme belajar mengajar disekolah, mutu dan kapasitas didalam tumbuh kembang dirinya sendiri.

Regarding children who conflict with legal issues, this must be clarified in Article 59 of the Child Protection Law No. 23 of 2002, which stipulates that "the government and society have the obligation and responsibility to provide protection to a child who is in urgent conditions such as children facing the law, children from minority and isolated groups, children who are exploited economically and/or sexually, child victims of trafficking, and special protection materials (drugs) for children addicted to narcotics, psychotropics, alcohol, and other addictive substances), children who are victims of kidnapping, children victims of sale and trafficking, children victims of physical and/or psychological violence, children with disabilities and children victims of violence and neglect.

Some time ago, one of the special crimes involving minors as couriers and users was found, namely narcotics crimes which are based on the Narcotics Law. Types of Narcotics are classified into three groups, namely groups I, II and III as stipulated in the Narcotics Law, but the highlight is the acquisition of several articles that happen to try to bring the victim's position closer to certain drug crime perpetrators such as drug users. As is also known, the enforcement of legal cases against children has a different enforcement or judicial process than the enforcement of legal cases for adults, in which the enforcement is also carried out in accordance with Article 1 Paragraph (7) of the Juvenile Justice System Law, which in that method is a transfer of the case resolution process. Of course, criminal cases from what originally existed in the justice system to outside the system by ensuring the values of justice and legal expediency as the purpose

of the law, but clearly there is legal protection for children who are entangled in legal cases in Indonesia (Sujana, Dewi, & Karma, 2022).

In order to realize the Indonesian government's drug-free program through the rehabilitation of addicts is very helpful in overcoming drug crimes. One of the efforts to overcome drugs by means of drug rehabilitation through music therapy and other methods. Based on Law Number 35 of 2009 concerning Narcotics and Law Number 5 of 1997 concerning Psychotropics, both regulate the application of rehabilitation sanctions as a period of punishment, therefore it is very appropriate if the application of rehabilitation offered is through music therapy (Hasan, 2017)

The purpose of this study is to analyze how the implementation of criminal sanctions against perpetrators of drug abuse in children.

RESEARCH METHODS

Research method is a method used by researchers or designs used to collect information or facts and use the information obtained for the benefit of a study (Sabaniah, Ramdhan, & Rohmah, 2021). The research method provides a view of the plan that will be carried out by researchers (Ismayani, 2019) Among them: Motede and activities to be carried out, duration of study, sources of information, and using what Motede the data is obtained which is then processed and described. This research uses the theory of Liberalism. Liberalist theory is used on the basis of freedom and human rights. The status of children as victims of drug abuse should not be used as a basis for treating children who use drugs in a discriminatory manner before the law. Therefore, states must ensure access to fair and fair juvenile criminal justice without prejudice to the treatment or process of children who abuse drugs unlawfully because it is in the best interest of the child as the primary consideration in deciding policies, laws, court decisions, and other government actions related to children. This research review uses literature in the form of book reviews, journals and various legal materials and applicable laws.

And this study also uses normative legal research types. This type of legal research is research that prioritizes examining legal materials based on books and applicable laws. Data collection used in this study using techniques including Using literature study techniques, is a motede of collecting data by conducting a review study of books, records, related or related to the problem. Using internet research or internet studies, namely motede collecting data through keyword searches for problems to be solved (Rifa'i, 2023).

RESULTS AND DISCUSSION

Drug trafficking in Indonesia is usually transported through land, air or sea package services (Oktaviani & Yumitro, 2022). It is not uncommon for immature or underage children to act as couriers or intermediaries when carrying drugs. The innocence of minors is the reason why drug dealers use these children to transport drugs. In addition, the use of minors as drug dealers is estimated to cover up the true identity of drug dealers. The rampant use of minors as drug dealers is inseparable from

the lack of parental attention and control of the surrounding community. Children who are difficult to control by parents and the surrounding community are often too easy to believe in the words or requests of people they just know, do not consider the dangers or risks they will face in the future. Technological advances also worsen the situation, science and culture that are not developmentally appropriate in children. Which actions committed by children from early childhood to adulthood are factors causing child delinquency. The impact of this delinquency is very difficult for many people, especially for themselves, and the surrounding community. Crimes committed by a child are not only acts of children who violate the law, in this case they are also classified as acts or that violate the norms that exist in society.

Some other reasons why children fall into substance abuse are::

1. Parental activities, or lack of parental time, parents are too busy not paying attention to the life and growth of their children who are still in school
2. Broken home, children lose their way due to the chaos of their families, and are vulnerable to falling into the abyss of drugs
3. Social changes, sudden lifestyle overuse, children have everything they should have, and it is easy to bring children into the abyss of narcotics
4. Finding difficulties in his education
5. The flow of young people, usually young people love novelty and adventure, these trips may be related to groups of people who use drugs
6. Incorrect or exaggerated information People who previously did not know the drug problem became curious, as a result of the information, but most people still made up many sensational stories to make people interested in trying.

Factors that cause child delinquency are one form of attitudes or actions carried out by children from childhood to adulthood, this kind of crime has a negative impact that many people can feel, especially for themselves, and the surrounding environment. Juvenile delinquency is not only child delinquency, but also a violation of social norms.

Article 114 paragraph (1) and paragraph (2) of Law "No. 35 of 2009" concerning Narcotics, in this article children are held criminally responsible as narcotics couriers as well as the application of the article of adults. In this case, a difference was found that lies in the implementation of sanctions where sanctions on children are lower than sanctions for adults. This is based on *Article 81 of Law "No. 11 of 2012"* related to the Juvenile Criminal Justice System, including: Imprisonment that can be given to children is at most 1/2 (half) of the maximum threat of imprisonment for adults. Based on the Law related to the Juvenile Criminal Justice System, a child who is in conflict with the law, a child as the object of a criminal act and a child who is sanctioned in a criminal act is a child who is facing the law. Criminal sanctions imposed on children have several points of view or perspectives that must be observed, including psychological or mental health in children and individual personalities owned by children. In the doctrine of criminal law, there are various reasons why judges do not convict criminal offenders or defendants who commit criminal acts in court.

It should also be emphasized that the punishment of children must reflect a sense of legal justice and a sense of community justice. children with the opportunity to improve themselves, because in special institutions to guide and direct children and provide opportunities for the restoration of the system of social order that has been damaged as a result of the child's behavior and for the community to provide opportunities and accept children back in the community after leaving the formation institution (Zanah et al., 2023).

Among the various forms of laws and regulations that define children is the understanding given to children by the Criminal Code (KUHP) Zanah et al., (2023), in Article 45 a child is defined as a person who is immature or has not reached the age of majority. 16 years old. Furthermore, the Civil Code (KUHPer) also provides the definition of children in Article 330 which stipulates that "an adult is someone who is not yet 21 years old or unmarried. In addition, the Child Protection Law "No. 23 of 2002" (hereinafter referred to as the "PA Law") and the Amendment "No. 35 of 2014" to the Juvenile Justice Law" No. 11 of 2012" (hereinafter referred to as the "SPPA Law") both provide definitions of the article. Article 1 point 1 (PA Law) states that "a person who is not yet 18 (eighteen) years old, including a child who is still in the womb is referred to as a child". Meanwhile, Article 1 Paragraph 3 of the Law on the Protection of the Rights of the Child defines a child as "a child who commits a violation of the law, hereinafter referred to as a child, is a child who has reached the age of twelve (twelve) years but has not reached the age of 18 (eighteen) children involved in the crime".

The basics for sentencing children who face the law, which are contained in the Law related to the juvenile justice system, namely Law No. 1. Law "Number 11 of 2012". Regarding the relationship between children used in drug trafficking intermediaries, there is no clear provision in determining the appropriate criminal punishment of children, but in general children involved in drug cases will still be prosecuted in accordance with the provisions of the "Drug Law" and will not affect the "Drug Law". "Decisions are made in the juvenile justice system." The "Anti-Drug Law" does not limit the age of criminal conviction, but in criminal justice, children will receive different treatment, for example detention procedures will not be united with adults, and the handling process will be accelerated. Paragraphs 1 and 2 of Article 119 of the Law state: "Any person who without rights and against the law offers for sale, sells, buys, receives, intercedes in the sale, exchange, or delivery of class II narcotics."

Then Article 124 paragraphs 1 and 2 read: "Any person who without rights and against the law offers for sale, sells, buys, receives, intercedes in the sale, exchange, or delivery of class III narcotics". However, the provisions contained in the Narcotics Law are not explained related to children as intermediaries in the sale and purchase of narcotics, but only speak in general terms about "everyone". Therefore, children are classified as drug dealers under Articles 114, 119 or 124 of the Narcotics Law and the SPPA Law. The child can be sentenced to imprisonment as stipulated in Article 81 paragraph 2 of Law Number 11 of 2012, hereinafter referred to as the "SPPA Law", that is, the imposition of punishment on children is at most half of the adult crime.

Therefore, according to the author's consideration, the child as an intermediary in the drug trade cannot be completely blamed on the child, on the one hand the child can also be said to be a victim. Running away from the role of an adult orders him to use the innocence of the child to gain more profit for the dealer.

Therefore, it is appropriate that a restorative justice approach be used to achieve the goal of child abuse. The authorities in this matter need to treat children faced with criminal acts with care or care, and must be based on a sense of responsibility to the perpetrators, victims and the community (Jambak, 2023).

Imposing crimes on children often causes debate, because this has far-reaching consequences both in terms of behavior and stigma among society and also in children. Law No. 11 of 2012 The Juvenile Criminal Justice System adheres to a *double track system*, which is a two-track system that regulates criminal actions and sanctions. Through the implementation of a two-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 on children who are appropriate and appropriate to be held accountable by children who are in conflict with the law (Nashriana, 2013).

There are 2 (two) categories of child behavior that make children have to face the law, namely *Offence* status (child delinquency behavior which if committed by adults 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 adults is considered a crime or violation of the law).

Regarding the provisions of 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:

1. Principal Crime, in the form of :
 - a. Criminal warning
 - b. Criminal with conditions :
 - 1) Out-of-board construction
 - 2) Community service
 - 3) Supervision
 - c. Job training
 - d. Construction in the board
 - e. Prison
2. Additional Crimes, in the form of :
 - a. Deprivation of profits derived from criminal acts
 - b. Fulfillment of customary obligations.

Freedom and human rights to children are one form of legal protection for children that can be done (*fundamental rights and freedoms of children*) (Arief, 1998). Legal protection of the rights of the child itself, intended to provide protection of needs that deal with the peace of the child. A protective form of children's human rights,

namely children in the judiciary will be given legal protection. In the Convention on the Rights of the Child, 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*) (Candrawati, 2007; Fahlevi, 2015).

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CONCLUSION

Based on the results and discussion of the study, it can be concluded that drug trafficking in Indonesia is usually transported through land, air or sea package services. It is not uncommon for immature or underage children to act as couriers or intermediaries when carrying drugs. The innocence of minors is the reason why drug dealers use these children to transport drugs. The basics of sentencing children who face the law, which are contained in the Law related to the juvenile justice system, namely. Law "Number 11 of 2012. Regarding the relationship between children used in drug trafficking intermediaries, there is no clear provision in determining the appropriate criminal punishment of children, but in general children involved in drug cases will still be prosecuted in accordance with the provisions of the "Drug Law" and will not affect the "Drug Law". "Decisions are enshrined in the juvenile justice system." The "Anti-Drug Law" does not limit the age of criminal conviction, but in criminal justice, children will receive different treatment, for example detention procedures will not be united with adults, and the handling process will be accelerated.

Legal protection for children caught in drug abuse cases is a protection effort prepared by the government aimed at children entangled in drug cases who are entangled in Articles 112 and 127 of Law Number 35 of 2009 concerning Drugs as drug owners and consumers, but the government provides protection for minors through UUPA and UUSPA. But excluding what usually arises from this protection, which is when a child is entangled in a drug case, the law cannot protect him fully because there is a gap in legal standards.

Criminal sanctions are applied to children who abuse drugs, where criminal sanctions are troublesome acts directed at someone who violates the norms prevailing in society and is prohibited by criminal law. Criminal drug sanctions against children who abuse drugs must be in accordance with Articles 112 and 127 of Law No. 35 of 2009 concerning narcotics, the law stipulates that everyone who suffers from class I drugs can be sentenced to a minimum of years imprisonment, and for victims of abuse medical and social rehabilitation must be carried out. For children who abuse drugs, there are still no provisions regarding criminal handling of children who commit criminal acts

and their handling, so that criminal handling of children is regulated in Article 71 of the UUSPA.

However, the length of the crime is limited by Article 79 of the UUSPA which limits the maximum penalty that can be imposed on a child to a maximum of 1/2 (half) of the maximum sentence for a child with an adult. The application of crime to children often causes debate among the community, because in this case it has very broad consequences both regarding behavior and stigma from society and children's identity. This has caused pros and cons among the public. On the one hand, many parties consider criminal punishment for children to be unwise, but there are some who think that punishment of children is important so that children's bad attitudes do not occur until adulthood, meaning to have a deterrent effect on the child. Based on the interview between the author and the investigator, it can be concluded that all legal processes of convicted drug convicts in children have been running with applicable legal provisions, it's just that there is one thing that should be an important point that is needed during the legal process. This is the lack of special protection for convicted minors. Protection of drug convicts in children is very important to be involved, considering how emotional and psychological control of children who are still vulnerable. The role of family and community in maintaining and guiding the family and social environment is also an important support to reduce this problem.

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