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Juridical Review of Narcotics Crimes Committed by Children (Decision Number 58/Pid.Sus-Child/2020/PN Mdn)

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Abstract

This study aims to determine and analyze related to (1) basic rights of children according to law; (2) how to solve cases of children facing the law as stipulated in the Juvenile Criminal Justice System, in this case drug abuse committed by children. This research is a normative legal research that uses types of statutory approaches, case approaches, and conceptual approaches. The legal materials used in this study are primary, secondary, and tertiary legal materials that are useful for drawing conclusions relevant to the problems in this study. The results showed that (1) this international convention is clear to us that the state has correctly designated children as subjects, namely as citizens who must be protected by their interests, have rights and obligations in the social, cultural, health, education and welfare fields (2) Discussing children's problems cannot be separated from discussing children's rights and children's obligations. Children will always be talked about because they are the future generations of the nation. With such conditions, the welfare of children will always be actual and feel important, this condition raises the need to protect children. The purpose of child protection is to ensure the fulfillment of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity and dignity and get a Juvenile Criminal Justice System protection from violence and discrimination, for the realization of Indonesian children who are qualified, have noble character and prosperity.

Introduction

Children are the greatest gift given by God Almighty to every family, so children must be cared for, nurtured, guided and given knowledge. According to the Child Protection Law, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Children are the successors of the nation who must be prepared for health, education, growth and development

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so that they are ready for society and eager to achieve their goals. As small humans who are immature in body and soul and a growing personality, therefore their growth and development period so that they can be useful for the country and nation.

Along with the times, crimes are increasingly taking various forms and methods, including among children, such as motorcycle gangs, promiscuity, persecution, and drug abuse. Crimes committed by children are caused by several factors, including the negative impact of the environment, parenting methods that greatly affect the growth and development of children. Children who lack affection from both parents in the growth and development of children and unhealthy environmental associations in helping the growth and development of children can result in children falling into criminal acts.

The narcotics crime itself is regulated in Law Number 35 of 2009. Narcotics are substances or drugs derived from plants or non-plants, synthetic or semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence.

Meanwhile, what happens in Indonesian society is that drug abuse is not only limited to the elderly and adults. In fact, many children have also been dragged into the destructive world, namely drug abuse (Soedarsono, 2004: 68). Children are very vulnerable to crime not only narcotics, other crimes such as rape, violence and others, this cannot be separated from a child's curiosity or curiosity about something new or being *in* his circle. Because of this curiosity, it is utilized by irresponsible people who want to damage the nation's future generation, the way by introducing narcotics to children by lying about the dangers of narcotics is not dangerous which aims to reap personal benefits from selling these narcotics.

The child needs attention and protection, because according to the perspective of the Child Protection Law, children who become perpetrators of criminal acts but they are also victims of the criminal act itself. According to Arif Gosita what is meant by victims are those who suffer physically and mentally as a result of the actions of others who are contrary to the interests of themselves or others who seek fulfillment with the interests of the human rights that suffer.

As mandated by Law No. 23/2002 on Child Protection which states that, Every child has the right to be able to live, grow, develop, and participate reasonably, in accordance with the dignity of

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humanity, and receive protection from violence and discrimination. Every child is entitled to a name as their identity and citizenship status.

As experienced by the child in the author's case analysis (Decision Number 58/Pid.Sus-Anak/2020/PN/Mdn). In the chronology of the case experienced by the child as a convict named T. Abdu Febriansyah Usman, the background of this problem is that the child is influenced by friends who offer to use marijuana. During the arrest, T. Abdu Febriansyah Usman and his friend were asked to buy a package of shabu by an adult friend of T. Abdu Febriansyah Usman.

From the arrest, police officers from Medan Sunggal Police Station found as many as 4 (four) packets containing cannabis narcotics with a net weight of 3.46 (three point forty-six). From the results of the arrest stated that the child on behalf of T. Abdu Febriansyah Usman has been proven legally and convincingly according to the law guilty of committing the crime of "Without the right or against the law to control Narcotics Group I not plants", as regulated and punishable in Article 111 paragraph (1) of Indonesian Law No. 35 of 2009 concerning Narcotics in conjunction with Indonesian Law No. 11 of 2012 concerning the Child Criminal Justice System. Sentencing the child T. Abdu Febriansyah Usman to imprisonment for 3 (three) years and undergoing work training for 6 (six) months at the Social Service of North Sumatra Province From the above background, it encourages the author to conduct research and thesis entitled "**Juridical Review of Narcotics Crimes Committed by Children (Decision Number 58/Pid.Sus- Anak/2020/PN Mdn)**".

Research Methods

Legal research aims to find the truth of coherence, namely whether legal rules are in accordance with legal norms, legal principles, and a person's actions. The legal research process requires research methods that support the results of the research (Marzuki, 2017: 47). This type of research is empirical juridical research (Adnyani, Atmaja & Sudantra, 2022).

This type of juridical research directs researchers not only to rely on legal theory, but also to make empirical observations of social, cultural, and political factors that can affect the implementation of law (Adnyani, 2016). The goal is to understand how the law works in everyday life and how people can utilize or respond to it (Adnyani, Mandriani & Asrini, 2019).

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The juridical method focuses on collecting legal materials (Adnyani, 2019). The data is then analyzed using interpretative to evaluate the effectiveness or efficiency of a law or policy (Adnyani, 2021). Analysis of legal materials to identify weaknesses in the legal system or improve the effectiveness of a legal policy (Adnyani & Purnamawati, 2024).

In writing this paper, the author uses empirical legal studies. The purpose of empirical legal writing is to provide support for legal development and to explore information relevant to this research. This type of research is practically a sociological legal approach that engages in direct analysis in the field, examining how the law is applied in people's lives. This research focuses on the gap between what should happen under the law (*das sollen*) and what actually happens (*das sein*) in society. The aim is to collect the facts and data necessary to understand and resolve the problems that arise.

The nature of this research is descriptive. That is, the author analyzes and describes the research objectively and in detail to get accurate results. Descriptive research is that the author tries to describe the research activities carried out on a particular object clearly and systematically, also explores describing with the aim of being able to explain and predict a phenomenon that applies on the basis of data obtained in the field.

Results and Discussion

Juridical Review of Narcotics Crimes Committed by Children (Decision Number 58/Pid.Sus-Child/2020/PN Mdn.)

The status of children or the definition of children in general characteristics will classify a different status from the legal situation of adults, meaning that children are placed into legal subjects who are classified as legal subjects who are able to be responsible for their legal actions.

Although legal acts committed by children are classified as crimes and or offenses in general and can be subject to criminal provisions or the criminal procedure law itself. The position of children in this sense includes grouping into *subsystems* of the following notions: 1). The definition of a child in the 1945 Constitution is the definition of a child established according to the 1945 Constitution. There is in the wisdom of Article 34 of the 1945 Constitution which states "*The poor and abandoned children are cared for by the state.*" Contains specificity for the grouping of neglected children and then

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made the object of development, guidance, maintenance with the aim that these children will be able to live a decent life of a life full of welfare. 2). Definition of child in Civil Law. The definition of children here is mentioned with the term "immature" and those who are in the care of parents and guardianship.

The position of a child as a result of immaturity, gives rise to the rights of the child that need to be realized with special legal provisions concerning the affairs of the child's civil rights. The civil rights of children are explained in Article 2 of the Civil Code which states "*The child who is in the womb of a woman, is considered to have been born, if the interests of the child require it*". (R.Subekti and R.Tjitrosudibio, 1992:3).

3). The position of children in the field of criminal law is placed in the understanding of children which means a negative interpretation of the law. In the sense of a child who has the status of a legal subject who should be responsible for the criminal offense (*starfbaar feit*) committed by the child himself, because the position as a child who is under the age of immaturity is placed as someone who has special rights and needs to get special protection according to applicable legal provisions. In the position of the child's status as a person who loses the rights of independence as a result of criminal law, is entitled to special treatment determined by the provisions of the criminal law itself as a group of legal subjects who are considered immature. 4). Definition of children in Law Number 39 on Human Rights (Constitutional Law). The definition of a child in Constitutional Law has a meaning that is not much different from the meaning established by the 1945 Constitution. In the meaning of the Constitution, children are entitled to receive status for protection from legal obligations either to be maintained or rehabilitated from criminal acts or other unlawful acts. 5). Definition of Children According to Labor Law. Labor Law pays attention to the position of this child. Children in Labor Law are prohibited from working in every company, because children should not be exploited in the economic field. Where the rights of children in this labor law must be recognized and protected, there must be no violation of the rights of the child.

The definition of Children in Conflict with the Law based on Article 1 paragraph 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which is referred to as children in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Meanwhile, paragraph 3 explains about children in conflict with the law, hereinafter

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referred to as children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal offense.

Juvenile delinquency as described has a different meaning, especially in relation to children in conflict with the law. However, it is incomplete if it does not include efforts that can be made in overcoming juvenile delinquency (both in the sense of delinquency that is not included in the category of criminal offenses and children in conflict with the law).

If you look at Permenkes Number 50 of 2018, the classification of narcotics can be divided into 3 groups, here are 3 groups of narcotics and their examples; 1). Narcotics Group I: raw *opium*, coca plants, coca leaves, raw cocaine, *heroin*, *metamphetamine*, cannabis plants; 2). Narcotics Group II: *ecgonine*, *morphine metobromide*, and *morphine*. 3). Narcotics Group III: *ethylmorphine*, *kodenia*, *polkodina*, and *propiram*. The effect of drug use referred to here is the result of improper use of drugs to obtain pleasure (Sudarto, 1986: 39). Drug abuse is a human behavior, not merely a problem of the substance or drug itself. As a behavioral problem, many variables influence it.

The factors of drug abuse are strongly influenced by personality factors, family factors, and cultural factors. The Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving the sentence.

The Juvenile Criminal Justice System includes children in conflict with the law, children in conflict with the law, children who are victims of criminal acts, children who are witnesses to criminal acts and everything related to the Juvenile Criminal Justice System. Children here are children under 18 years of age. The principles of juvenile criminal justice according to Law No. 11/2012 on Juvenile Criminal Justice System are; 1). Protection; 2). Justice; 3). Non-discrimination; 4). Best interest of the child; 5). Respect for the child; 6). Survival and growth and development of children; 7). Development and guidance of children; 8). Proportionality. The further consideration states that to carry out guidance and provide protection for children, support is needed, both with regard to institutions and legal instruments that are more stable and adequate, therefore the provisions regarding the implementation of courts for children need to be carried out specifically (Iman Jauhari, 2003: 140).

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This international convention is the basis for a country to provide protection for children, so that there are no violations of children's rights, lack of community and family concern for the implementation of children's rights, or lack of protection for working children. (Aminah Aziz:67).

In addition to the Convention on the Rights of the Child (KHA) above, children's rights are also regulated in Law Number 23 of 2002 concerning Child Protection regarding the rights and obligations of children listed in article 4 to article 19. The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law from the investigation stage to the guidance stage after undergoing a criminal process based on protection, justice, non-discrimination, the best interests of the child, respect for the child, survival and growth of the child, proportionality, deprivation of independence and punishment as a last resort and avoidance of retribution Article 1 number 1 and Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. According to the SPPA Law Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice, which aims to; 1). Achieve peace between the victim and the child; 2). Settle the child's case outside the judicial process; 3). Avoiding children from deprivation of liberty; 4). Encouraging the community to participate; and 5). Instill a sense of responsibility to the child.

According to PERMA 4 of 2014, a Diversion Conference is a meeting between parties involving the child and parents/guardians, victims and/or parents/guardians, Community Counselors, Professional Social Workers, representatives and other involved parties to reach a diversion agreement through a restorative justice approach. The facilitator is a judge appointed by the President of the Court to handle the child's case. Diversion is a diversion of the process in the long and very rigid child case settlement system. Mediation or dialog or deliberation is an integral part of diversion to achieve restorative justice.

In its implementation, the Social Affairs Office usually cooperates with vocational training institutions, companies, and non-governmental organizations to organize training programs that suit the needs of children in conflict with the law. The main goal is to provide these children with the opportunity to get decent jobs and become productive members of society after the legal process. Investigators, Public Prosecutors, Community Counselors and/or legal aid providers and other officers in examining cases of children, child victims and/or child witnesses do not wear toga or

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official attributes (Article 22 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System), then at every level of examination children must be provided with legal assistance and accompanied by community counselors or assistants with applicable provisions. Examination at the court hearing for children in the first level is carried out by a single judge, but the President of the Court in examining children's cases with a panel of judges in the event of a criminal offense punishable by imprisonment of 7 years or more difficult to prove.

Judges in examining children's cases in juvenile court are declared closed to the public except for the reading of decisions. Then in the trial process (Article 55 of Law Number 11 of 2012 concerning the Child Criminal Justice System) Judges are obliged to order parents/guardians or companions or other legal aid providers; in the event that parents, guardians or companions are not present, the trial is continued accompanied by an advocate or other legal aid provider and or community counselor. The problem of children committing non-crimes can be easily understood, namely violating the provisions in the existing Criminal Law Regulations, for example violating the Articles stipulated in the Criminal Code or other criminal law regulations that are outside the Criminal Code, such as Narcotics Crimes and so on.

In Indonesia, with the enactment of Law No. 11/2012 on Juvenile Justice System, it has brought new changes related to imprisonment that can be imposed to children, especially children as perpetrators of crimes so that the provisions in Article 10, Article 45, Article 46 and Article 47 of the Criminal Code are no longer used for children.

In the provisions of Law No. 11/2012 concerning the Juvenile Justice System, there is an age limit for children to be tried in a juvenile court, namely Article 1 paragraph (3) which states that children who have reached the age of 12 (twelve) years but have not reached the age of 18 (eighteen) years.

Indeed, in writing in our criminal law, there is no rule that outlines a guideline that is used as a basis for consideration by the Judge in imposing imprisonment, so it tends to have consequences due to the absence of a legal basis for the Judge as a guideline in providing the basis for such consideration. Therefore, the most important consideration for Judges in imposing imprisonment against children is juridical consideration, namely drawing facts in the trial that arise which are conclusions from the

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testimony of witnesses and testimony of child defendants and evidence submitted and examined in court.

After that, the judge's subjective considerations or beliefs based on *Moral Justice* and *Social Justice*, as well as the principles of justice, the principle of expediency, and the principle of legal certainty or non-judicial considerations.

Moral Justice means that the judge must consider criminology, sociology and psychology factors in the trial and decision of juvenile criminal cases in addition to paying attention to positive law. From the sociological side of child development, the basic background of a child to commit a criminal offense is the position of the child with all the characteristics and characteristics that are unique. Meanwhile, from a psychological aspect, children can be categorized as incapable humans, in the sense that in deciding to do actions, their thoughts, psychology and consciousness are more driven by emotional factors, not perfect logical thinking like adults. Therefore, naughty children tend to come from disharmonious families where the child imitates the actions of the people closest to him, namely the family.

The next aspect is *Social Justice*, where judges do not live on a throne but live socializing with their heterogeneous society. Thus the Judge in enforcing positive *law (law in book)* can realize social justice (*law in action*), so that the Judge's decision in a juvenile criminal case has the dimension of providing justice that is beneficial for the benefit of the child as well as his social environment including parents and the surrounding community. The facts in the trial and these principles are the basis for whether the criminal sentence imposed is fair enough with the actions committed.

Conclusion

Anti-drug campaigns need to be carried out carefully and effectively to influence children's behavior related to drug abuse, so early detection of child development is an important effort in preventing drug abuse among adolescents. The role of the government, both in terms of anti-drug campaigns and early detection of child development, is very important in efforts to prevent drug abuse by children. The judge's reasoning in imposing imprisonment sanctions on children as perpetrators of narcotics crimes considers factors such as social status, family economy, children's life history, motives for committing criminal acts, confession, and remorse by the defendant.

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The juvenile criminal justice system is the entire process of resolving children's cases that deal with justice, non-discrimination, the best interests of the child, respect for the child, survival and growth of the child, proportionality, deprivation of freedom and punishment as a last resort and avoidance of retribution.

Recommendations

The Provincial National Narcotics Board needs to improve its anti-drug campaign strategy to be more effective and have an impact on adolescents' behavior regarding drug abuse. The government needs to be more active in socialization and counseling about drugs, not only in urban areas, but also in rural areas to raise awareness of parents and communities in preventing drug abuse by children.

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