

Legal Regulations for Children Involved in Narcotics Crimes in Indonesia

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Abstract : Norms that protect children as perpetrators or victims, especially narcotics, are basically complete, namely the application of Law No. 35 Of 2009 On Narcotics Against Children Involved In Narcotics Crimes After The Birth Of Law No. 11 of 2012 on Child Protection. Seeing the verdict against the child offender who should be given protection, on the other hand the child protection rules strongly emphasize that children should not be reduced let alone deprived of their independence. The research method uses empirical juridical approach, the data used is secondary data and primary data. The interviewees in this study consisted of interviews with judges, investigators, child lawyers, social workers from Child Protection institutions. The data analysis used is qualitative. The provisions stipulated in law No. 35 of 2009 this of course applies in general but if involved in narcotics crime is a child then it is mandatory to use the Child Act. Before the birth of Law No. 11 of 2012 on the juvenile criminal justice system, the law used in the event law is law No. 3 year 1997 namundalam practice when the procedural law is regulated in the Narcotics Crime Act then used by investigators is the Narcotics Act while the Act No. 3 of 1997 on Juvenile Court impressed only as a companion to the law.

Keywords : Crimes, Regulations, Children, Narcotics

Abstrak : Penelitian ini bertujuan untuk mengetahui norma hukum yang melindungi anak sebagai pelaku atau korban khususnya narkoba pada dasarnya sudah lengkap yaitu penerapan Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Terhadap Anak yang Terlibat Tindak Pidana Narkotika Setelah Lahirnya Undang-Undang Nomor 11 Tahun 2012 tentang Perlindungan Anak. Melihat putusan terhadap pelaku anak yang harus diberi perlindungan, di sisi lain aturan perlindungan anak sangat menekankan bahwa anak tidak boleh diperkecil apalagi dicabut kemandiriannya. Metode penelitian menggunakan pendekatan yuridis empiris, data yang digunakan adalah data sekunder dan data primer. Narasumber dalam penelitian ini terdiri dari wawancara dengan hakim, penyidik, pengacara anak, pekerja sosial dari lembaga Perlindungan Anak. Analisis data yang digunakan bersifat kualitatif. Ketentuan yang diatur dalam undang-undang Nomor 35 Tahun 2009 ini tentunya berlaku secara umum namun jika yang terlibat dalam tindak pidana narkoba adalah anak maka wajib menggunakan UU Anak. Sebelum lahirnya Undang-Undang Nomor 11 Tahun 2012 tentang sistem peradilan pidana anak, undang-undang yang digunakan dalam undang-undang acara adalah undang-undang No. 3 tahun 1997 namun dalam prakteknya ketika hukum acara diatur dalam Undang-Undang Tindak Pidana Narkotika maka yang digunakan penyidik adalah Undang-Undang Narkotika sedangkan Undang-Undang Nomor 3 Tahun 1997 tentang Peradilan Anak terkesan hanya sebagai pendamping undang-undang.

Kata Kunci : Kejahatan, Peraturan, Anak, Narkoba

INTRODUCTION

Children are the hope of the nation. As the next generation, we need continuous guidance and protection for the sake of survival, growth and development of physical, mental, social and protection from all possibilities that will harm them (children) and in the future. Narcotics and other illegal drugs, become one of the triggers of the destruction of children. Children are often the target of drug traffickers, because children are still unstable, easily influenced so potentially entangled in the abuse of illegal drugs such as narcotics.

Children who are involved in narcotics, in fact, are victims. So that the state should provide protection by prioritizing the fulfillment of children's rights and avoiding children from the criminal justice process that will give a negative stigma to children, including avoiding children from imprisonment. Child protection is an effort made to create conditions so that every child can exercise their rights and obligations for the development and growth of children reasonably, both physically, mentally, and socially. In the juvenile criminal justice system in Indonesia, children as drug abusers, still undergo the judicial process. The judicial process is to hold the child accountable. Although undergoing the judicial process, the child should still receive protection. The consideration of narcotics abusers children get protection, because it is believed that child abuse of narcotics is not entirely derived from the child, but rather the influence of the surrounding environment. Drugs are the scope of extraordinary crimes (extra ordinary crime) as well as terrorism, and corruption, this is caused because the impact of these types of crimes is very broad and has an impact on social, economic, and cultural.

North Sumatra as one of the provinces in Indonesia is the region with the highest drug cases in Indonesia. The National Narcotics Agency recorded 12,890 drug cases until the first quarter of 2021. North Sumatra became the province with the highest number of drug cases. There are 2,049 cases recorded in North Sumatra. North Sumatra is also the province with the highest number of people caught in drugs, namely 2,661 suspects. Based on the results of research by the Indonesian Institute of Sciences (LIPI) in collaboration with the National Narcotics Agency (BNN) as many as five cities in Indonesia are quite high drug prevalence rates among adolescents and millennials. The five big cities are Medan, Yogyakarta, Samarinda, Bandung, and Surabaya.

There is a legal problem if the act that is done is an extra ordinary crime or extraordinary crime, namely narcotics crime and on the one hand the perpetrator is a child where there are some peculiarities inherent in him. Narcotics crime is regulated by law No. 35 of 2009 on narcotics with serious criminal threats while Juvenile Justice is regulated in Law No. 11 of 2012 on the juvenile criminal justice system with all its mechanisms that are different from adults. In practice, for this case, it does not use the provisions of the Criminal Procedure Law as stipulated in the Criminal Procedure Code (Code of Criminal Procedure) but uses Law No. 11 of 2012 on the juvenile justice system. The child penal system is a *lex specialis* (special provision). where in its rules the special provisions may override the general provisions. Interesting to be studied and researched, that on the one hand the child with all the instruments must be protected and the acts committed are extra ordinary crime (extraordinary crime), namely narcotics crime.

The concept of narcotics in Indonesia was first known in the Dutch East Indies era through the *Verdoovende Middelen Ordonnatie* (*Staatsblad* 1927 No. 287 jo.536). Provisions in the *Verdoovende Middelen Ordonnatie* defines narcotics as dope and opium. In *Verdoovende Middelen Ordonnatie* also related to the development of modern traffic and transportation that can lead to the implementation of the spread of narcotics to Indonesia. And there is also the addition of progress achieved in the form of drug manufacture. The concept in the *staatsblad* was more or less influenced by the development of modern narcotics which began in 1805. At that time a doctor named Fridrech Wilhen had discovered an ammonia opium compound called morphine. Morphine was introduced as a substitute for opium called raw opium, which was introduced by Alexsander in 330 BC. At that time opium was used as an addition to spices in cooking. In 1898 new narcotics were produced in Germany and became a well-known drug for pain relief, and at that time narcotics were used in the medical world as painkillers. Along with the birth of the convention on narcotics in 1961, the regulation of narcotics in *Verdoovende Middelen Ordonnatie* is no longer considered adequate, so it was updated with Law No. 9 of 1976 on narcotics.

In Law No. 9 of 1976, it discusses the enforcement and protection of law against narcotics abuse. This law positions narcotics users also as victims of narcotics abuse. Against them the efforts of law enforcement go hand in hand with the efforts of legal protection. Treatment of them in the form of treatment, rehabilitation of victims, as well as preventive measures. Narcotics regulation in Indonesia changed in 1997, namely with the birth of Law No. 22 of 1997 on narcotics. This law became the forerunner of the birth of BNN as a state institution specialized in dealing with narcotics.

The 1998 reform fundamentally changed the construction of law and order in Indonesia. In addition to positive changes in the form of democratization of the legal system and Government, Reform also has an impact on the expansion of the narcotics market and production in Indonesia. So it is necessary to make changes to the narcotics law that are more comprehensive and able to minimize this Narcotics Crime. Thus was born the Law No. 35 of 2009 on narcotics.

At present, narcotics crime is not only a local or national crime, but also a transnational and even international crime. Narcotics abuse is a modern phenomenon and has become the focus of attention of various international organizations, various groups and countries, because narcotics crime poses many threats or dangers to the state, generation of the nation's successor and is very detrimental to the welfare of society.

Narcotics crimes are now targeting children, children are often used by adults to trick officers. Children are persuaded and even given free drugs, after the child is addicted, the child will be used to be a courier. In fact, not infrequently this Narcotics Crime coincides with the crime of trafficking. Teenage girls are fed with drugs, after addiction and the child can not buy the drug will be exchanged for sex so that eventually the girl is forced or persuaded to become a drug courier.

Law No. 35 of 2009 is seen as a step forward in the fight against narcotics, the threat of punishment is high enough even to the death penalty is expected to minimize the development of narcotics crime, but the provisions in the legislation are contradictory if the perpetrator is a child. Children who are the shoots, potentials and successors of the ideals of the nation's struggle certainly cannot be punished in accordance with their actions even though these actions are extra ordinary crimes, considering the function and role of the child himself.

The ability of children who are still limited and not as perfect as adults must be considered by the law and law enforcement officers in handling from the level of Investigation, Prosecution to punishment.

Article 59 of the child protection law has clearly placed children involved in narcotics crimes as victims, but the fact is that children involved in drug abuse are still treated as miniature adults and punished according to the provisions of the law that has been established, namely Law No. 35 of 2009 on narcotics., Whereas children should be involved as perpetrators of criminal acts, no exception, children as perpetrators of criminal acts in narcotics abuse must still be treated humanely in accordance with the basic principles of Child Rights fulfillment as well as the values of the convention on the rights of the child contained in Article 2 of law no. 23 of 2002 on child protection, namely: 1. Non-discrimination; 2. Best interests of the child; 3. Right to life, survival and development; and 4. Respect for the child's opinion.

To accommodate the implementation of legal protection of children in the criminal justice process in Indonesia, the government has passed law No. 3 of 1997 on Juvenile Courts. But in the long run what is mandated in the law (UU) still has many weaknesses both from the substance of the content which is considered contrary to the spirit of protection of children and practice in the field.

Considering this, the government established law No. 11 of 2012 on juvenile criminal justice system (SPPA) in lieu of Law No. 3 years in the Juvenile Criminal Justice System Act. Justice that was only focused on retributive approach shifted to a restorative approach by implementing diversion. Law No. 11 of 2012 on juvenile criminal justice system changed the view that punishment should be the last resort for children facing the law, so the approach to punishment was changed. This law of the juvenile criminal justice system puts forward the restorative justice sentencing model. Restorative justice punishment Model is recovery to the original condition and punishment as a last resort so that other ways take precedence outside the court. One of them is by means of diversion, namely the transfer of settlement of child cases from processes in criminal

justice to processes outside criminal justice. Diversion is the most appropriate way out so that the child is not taken to court. Therefore, this diversion must be the obligation of law enforcement officers in every handling both at the level of investigation, prosecution, and examination of cases in court.

In Law No. 11 of 2012 concerning the juvenile criminal justice system requires every law enforcement officer, both the police, prosecutors and judges to divert cases of criminal acts committed by children. This is confirmed in Article 7 Paragraph 1 of Law No. 11 of 2012 concerning the juvenile criminal justice system states that at the level of investigation, prosecution, and examination of child cases in the District Court must be attempted diversion. The statement of this article indicates that as far as possible the criminal acts committed by the child are sought not to continue to the level of examination in court until the conviction, but are sought to restore back to its original condition because it is related to the condition and mental development of children who are still unstable. However, in practice when dealing with children involved in extra ordinary crimes such as narcotics crimes, there are still doubts for investigators and judges to apply diversion and treat children as victims as mandated by the Child Protection Law and the child criminal justice system law.

RESEARCH METHODS

Research is a series of activities that are systematic and carried out in certain ways and planned in reviewing, studying or investigating a problem to obtain theoretical knowledge that can enrich the repertoire of Science and is used to solve the problems being faced. The object of the problem to be studied in this study is the effectiveness of the application of Law No. 35 of 2009 on narcotics against children involved in narcotics crime after the birth of Law No. 11 of 2012 on child criminal justice system, this study implies a method based on legal analysis. Based on the object, this study uses the type of empirical juridical Law Research. The approach used in a normative legal research will allow a researcher to utilize the findings of empirical law and other sciences for the benefit and analysis and expansion of law without changing the character of law as a normative science. The method of approach used in this study is a statutory approach (statute approach) and conceptual approach (conceptual approach) which is done by reviewing all regulations or legislation related to legal issues to be studied, namely research on the norms contained in the 1945 Constitution, Law No. 23 of 2002 on Child Protection jo Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection, Law No. 35 2009 on drugs, and Law No. 11 of 2012 on juvenile criminal justice system, conventions related to narcotics and children, judges' decisions and the determination of diversion on children involved in narcotics abuse and field approach with in-depth interview techniques.

While the nature of the research in this thesis is to use descriptive analytical, which describes the legislation in force associated with the theories of law and practice of positive legal implementation concerning the above problems. Descriptive Analytical is a method used to describe a condition or circumstance that often occurs or takes place whose purpose is to provide as thorough data as possible about the object of research so that it is able to explore things that are ideal, then analyzed based on the theory of law or applicable legislation.

RESULTS AND DISCUSSION

Narcotics crime is one of the International crimes that has reached various circles. From children to parents, both men and women. This Narcotics Crime is a special crime whose actions have been regulated in a separate law. Legal arrangements in the handling of narcotics crime has repeatedly changed for the improvement and provision of maximum action due to the increasing prevalence of narcotics circulation, the current rules against narcotics crime is poured into law No. 35 of 2009 on narcotics.

In the provisions of the Narcotics Crime Act No. 35 of 2009 the criminal rules are contained in articles 111 to Article 147. The people who can be convicted in the Narcotics Crime Act are divided into several categories :

1. Persons without rights and against the law to plant, maintain, store, control or provide Narcotics Group 1 in the form of plants (Article 111), Group I not in the form of plants (Article

- 112), Group II (Article 117), Group III (Article 122), as well as narcotic precursors for the manufacture of narcotics (Article 129 letter a).
2. Persons who without rights and against the law produce, import, export or distribute narcotics of Group 1 (Article 113), Group 2 (Article 118), Group 3 (Article 123) and narcotic precursors for the manufacture of narcotics (Article 129 letter b).
 3. Persons without rights and against the law offer for sale, Sell, Buy, receive, mediate in the sale and purchase, exchange or delivery of narcotics class I (Article 114), Class II (Article 119), Class III (Article 124) and Narcotics precursors for the manufacture of narcotics (Article 129 letter c).
 4. Persons without rights and against the law carry, send, transport or transfer Narcotics of Group 1 (Article 115), Group II (Article 120), Group III (Article 125), as well as narcotic precursors for the manufacture of narcotics (Article 129 letter d).
 5. Persons without rights and against the law using or giving narcotics to others Class 1 (Article 116), Class II (Article 121) Group III (Article 126).
 6. Abuse of narcotics (Article 127 paragraph 1).
 7. Parents or guardians who do not report addicts who are underage children (Article 128).
 8. Corporations involved in Narcotics Criminal proceedings (Article 130).
 9. People who know but do not report the existence of Narcotics Crime (Article 131).
 10. A person who orders, gives or promises something, provides an opportunity, advocates, facilitates, forces with threats, forces with violence, deceives or persuades a child who is not yet of legal age to be involved in a Narcotic Crime (Article 133).
 11. Drug addicts who are of legal age and their families who do not report (Article 134).
 12. Person who places, pays or spends, deposits, exchanges, hides or disguises, invests, stores, donates, bequeaths, and/or transfers money, property, and objects or assets whether in the form of movable or immovable, tangible or intangible objects derived from Narcotics Crime and/or narcotics precursor crime (Article 137 paragraph 1).
 13. A person who receives the placement, payment or expenditure, custody, exchange, concealment or disguise of investments, deposits or transfers, grants, inheritances, property or money, objects or assets in the form of movable or immovable, tangible or intangible objects that he knows to be derived from the crime of narcotics and/or the crime of narcotics precursors (Article 137 paragraph 2).
 14. Persons who hinder or complicate the investigation and prosecution and examination of cases of narcotic crimes and / or narcotic precursor crimes before the court (Article 138).
 15. Skipper or flight captain who unlawfully does not implement the provisions referred to in Article 27 or Article 28 of Law No. 35 of 2009 (Article 139).
 16. Investigators of civil servants who unlawfully do not implement the provisions referred to in Article 88 and Article 89 of law no. 35 of 2009 (article 140 paragraph 1), and Investigators of the Indonesian National Police and BNN investigators who do not implement the provisions referred to in Article 87, Article 89, Article 90, Article 91 paragraph (2) and Paragraph (3), and Article 92 paragraph (1), Paragraph (2), Paragraph (3), and Paragraph (4) (Article 140 paragraph 2).
 17. Head of state prosecutor who unlawfully does not implement the provisions as meant in Article 91 paragraph (1) (Article 141).
 18. Laboratory personnel who falsify test results or unlawfully do not carry out the obligation to report the results of their tests to the investigator or public prosecutor (Article 142).
 19. Witnesses who testified untruthfully in the examination of Narcotics Criminal Cases and Narcotics precursors before court hearings (Article 143).
 20. Foreign nationals who commit narcotic crimes (Article 146).
 21. Leaders of hospitals, public health centers, medical centers, government-owned pharmaceutical preparation storage facilities, and pharmacies that distribute narcotics of groups II and III not for the benefit of Health Services (Article 147 letter a).
 22. Leaders of scientific institutions that plant, Buy, store, or control narcotic plants not for the benefit of scientific development (Article 147 letter b).

23. Certain pharmaceutical industry leaders who produce Class I Narcotics not for the sake of scientific development (Article 147 letter c).
24. Leaders of pharmaceutical wholesalers who distribute Class I narcotics that are not for the benefit of scientific development or distribute Class II and III narcotics not for the benefit of health services and/or not for the benefit of scientific development (Article 147 letter d).

Narcotics crimes are generally committed by adults, but not infrequently these crimes are also committed together with children. Characteristics of children who are still unstable tend to be easily influenced to commit acts related to narcotics. Law No. 35 of 2009 on narcotics in Article 133 regulates the act of utilizing minors to carry out narcotic activities. But in practice when there is a criminal offense involving children and adults as perpetrators until now the author has not found the application of Article 133 against adults who have persuaded the child. Against the child is imposed the same article as the adult but only a lighter punishment as provided for in the Juvenile Criminal Justice System Law.

The provisions set forth in law No. 35 of 2009 this of course applies in general but what if the person involved in the narcotics crime is a child who in fact is in the provisions of Law No. 35 of 2014 concerning amendments to law no. 23 of 2002 on the protection of children shall be considered as children who should receive special protection.

The child is a special legal subject, whose rights are protected and regulated in special laws and regulations. Related to the case of children who commit narcotics crimes, in the law on Child Protection and the law on child criminal justice system is regulated regarding the legal protection of children in conflict with the law. So in this case, the sanctions for adults and children are different.

Before the birth of Law No. 11 of 2012 concerning the juvenile criminal justice system, Indonesia used Law No. 3 of 1997 concerning juvenile courts. In Law No. 3 of 1997 regulated on the law of events for children who conflict with the law. With the provision of the execution of half of the maximum legal provisions specified in the law imposed on adults. Several cases of children involved in narcotics crimes have been handled by the Center for Child Study and protection (PKPA) after the implementation of law no. 35 of 2009 on narcotics mostly is the imposition of criminal law by using Law No. 3 of 1997 on Juvenile Court. From several cases of children involved in narcotics crimes handled by PKPA there are at least 2 interesting cases that the author can describe due to the many violations committed by law enforcement officers in providing protection to children involved in narcotics crimes. The first case occurred around between 2012-2013 PKPA once handled a girl victim of trafficking in persons who was eventually used as a courier methamphetamine, the victim's child was told and forced by a Trafficker to sell methamphetamine to someone who would be his guest who turned out to be an undercover North Sumatra police, so the child was arrested and taken to the police station. In the process, the North Sumatra Police Drug Subdit did not coordinate with the women and Children Protection Subdit (PPA), which has now been renamed the Youth, Children and women Subdit (Renakta). So that child trafficking victims who under the provisions of the Child Protection Act No. 23 of 2002 cannot be made suspects and must be protected precisely by the North Sumatra Police Drug Subdit are designated as suspects and even detained for 3 x 24 hours referring to the provisions of the arrest deadline as stipulated in Article 76 of the Narcotics Law which reads "the implementation of the arrest authority is carried out no later than 3 x 24 hours from the date the arrest warrant is received by the investigator (Paragraph 1). The arrest referred to in Paragraph 1 can be extended for a maximum of 3x24 hours. In its handling, the investigator assigned to investigate is not a child investigator as mandated in Law No. 3 of 1997 concerning children's courts. As a result of a misunderstanding by law enforcement officials, the child ended up experiencing an excess period of detention that was only known to PKPA after becoming the legal authority of the child during the process in the prosecutor's Office. Although the handling of the law finally released the child for the sake of law by the prosecutor post P-21 but the legal process in court continued and the judge finally gave the verdict the child returned to the parents. However, according to PKPA, it is still not appropriate because children are victims of human trafficking as well as victims of drug abuse that should be protected and cannot be designated as suspects, let alone convicted. Although the verdict is to return the child to the parents, the status of the child guilty of violating Article 114 of Law No. 35 of 2014 remains

pinned on the child. And what is more disappointing in the case of adults who have committed criminal acts of trafficking and have told children to give drugs to the police who do the disguise is processed in violation of Article 112 of Law No. 35 of 2009 or the owner without being subject to Article 133, namely people who order, give or promise something, provide opportunities, advocate, provide, doing tricks or persuading children who are not old enough to be involved in narcotics crimes that should give weight to the adult perpetrator.

While the second case occurred in June 2014 where despite Law No. 11 of 2012 on juvenile justice system has been promulgated but the new provisions came into force on July 30, 2014. A child named MF was charged by the public prosecutor at the Medan State Prosecutor's office in violation of Article 112 paragraph (2) and Article 131 paragraph (1). In the indictment and the process of evidence at the trial it was known that the type of ecstasy narcotics belonged to someone who was entrusted to the child's cousin where the child lived. By his cousin, the child was asked to count the ecstasies and help put them in plastic clips without ever knowing that the tablets he counted were ecstasy, this was based on the child's confession which was corroborated by the child's cousin who was an adult defendant in a separate file. But by police investigators in this case the West Medan Police, children remain subject to Article 112 and Article 131 of Law No. 35 in 2009 and remains in child custody. In the trial process, the child was determined by the judge to violate Article 131 of Law Number 35 of 2009 and sentenced to 3 months in prison because the provisions of Article 131 of the Narcotics Law contain a maximum sentence of only 1 year.

Of the 2 cases that have been described before the enactment of Law No. 11 of 2012 on the juvenile criminal justice system is very clearly seen in dealing with children involved in a criminal offense either as owning or storing, or distributing or just users or just knowing not to report law enforcement officials, especially police investigators only rely on their handlers according to law No. 31 of 2009 on narcotics and only use Law No. 3 of 1997 as a procedural law if the procedural law is not regulated in the Narcotics Crime Act.

On July 30, 2014 Law No. 11 of 2012 on juvenile criminal justice system was officially enacted, at the beginning of its appearance it must be recognized that this law is not ready to go on air due to the unavailability of complete facilities and infrastructure as mandated by this law and also the absence of implementing regulations from this law, but at the implementing level in this case some law enforcement officers, especially judges, have begun to want to apply the system of diversion and restoration of justice in giving decisions to children who conflict with the law. While other law enforcement officials such as police and prosecutors still adhere to the guidelines that diversion can only be done against criminal acts that threaten punishment under 7 years, while for narcotics crimes will be seen the level of child guilt, if a child only violates Article 127 of Law No. 35 of 2009 then it can be done because of the threat of a maximum penalty of only 1 year. But in practice, even though the child is suspected only as a drug addict, investigators still attach it to Article 111 or 112 of Law No. 35 of 2009 which threatens punishment of up to 20 years so that finally the diversion is declared difficult to do.

In their journey, law enforcement officials today are also not the same and consistent in the meaning of punishment or action given to children involved in narcotics crimes so that from handling at the investigation level to the decisions given by judges are very different depending on the level of the child's guilt and the understanding of law enforcement officials.

CONCLUSION

Before the birth of Law No. 11 of 2012 on the juvenile justice system, every child accused of being a perpetrator in narcotics crimes even though only as a user or knowing but not reporting in the process is still detained because it is still held to Article 111 or 112 of the Narcotics Law which carries a penalty of more than 5 years. Therefore, with the enactment of Law No. 11 of 2012 on the Juvenile Justice system, prison sentences should not be imposed for children involved in narcotics, especially children who are victims of narcotics abuse. Therefore, the government must build rehabilitation places or special education institutions to accommodate children involved in narcotics crimes.

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