

Legal Protection for Children as Intermediaries in the Sale and Purchase of Narcotics

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Abstract

The involvement of children in narcotics crimes as drug couriers is a series of evil conspiracy in carrying out illegal drug trafficking, but in the capacity of the category of children who help in trading or distribution by accompanying the owner of the goods with promises or enticements has often hit children of that age, this is a very concerning thing where the child has faced the law and is classified as having committed a drug crime. In this case, the child has committed an act, an evil conspiracy without rights or against the law offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over Class I Narcotics in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks or in the form of non-plants weighing more than 5 (five) grams. As a result of the action, the child as regulated and threatened with criminal penalties in Article 114 Paragraph (2) Jo Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law Number 11 of 2012 concerning the Child Criminal Justice System. The type of research in writing this thesis is carried out with a type of normative legal research in the form of library research using 3 legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. This legal research focuses on library studies which means that it will examine and review more existing and applicable legal regulations. The results of this study indicate that Legal Protection for Children as Intermediaries in the Sale and Purchase of Narcotics in the Indonesian Legal System in Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj. namely by referring to Article 114 Paragraph (2) Jo Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, then the Child is Muhammad Pajar, proven legally and convincingly guilty of committing the crime of "Without the Right to Commit Evil Conspiracy" Selling Class I Narcotics that are not Plants Weighing More than 5 Grams The Panel of Judges at the Binjai District Court has Assigning actions to children Muhammad Pajar, in the form of Action returned to parents and Order AA child named Muhammad Fajar was released from detention at the Temporary Child Placement Institution (LPAS). The basis for the judge's consideration is the Child Criminal Justice System as regulated in Article 69 paragraph (1) of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System. This Criminal Policy is a grand design of the Indonesian Government's legal policy that recognizes children's human rights with the aim that children are the Nation's Capital Assets that can be useful in the future so that Special Regulations are needed in Resolving Cases that befall them. With the hope that the Child can Return to Society as the Nation's Capital Assets in the future.

Keywords: Legal Protection, Child Crime, Narcotics.

INTRODUCTION

Law enforcement in Indonesia is in the spotlight by the public and the media because law enforcement is considered a weapon to fight all types of crimes that are increasingly developing where law enforcement officers are required to resolve legal problems so that the objectives of the law, namely legal certainty, justice and benefits, can be achieved. Including criminal acts committed by children. Today, various types of crimes have involved children as perpetrators of criminal acts or crimes.

One of the phenomena that often occurs today is drug abuse. This is very worrying because drug abuse by children does not only occur in Indonesia, the same thing is happening in many countries in the world. The circulation of narcotics in Indonesia continues to increase and has even reached a very worrying level. As is known, narcotics are currently not only distributed in big cities but have reached the rural level and perpetrators of drug abuse are not only those who are adults but have spread to all levels of society ranging from students, students, entrepreneurs, officials, street children and so on.¹

The spread of drugs among children has reached a stage that is very difficult to control, this fact is very worrying because children are the next generation of the nation in the future. Children need special guidance and protection. Children generally have a great sense of curiosity, so that information or something new is worth trying without realizing the consequences of the new thing leading to good or vice versa.²

In dealing with and overcoming the actions and behavior of children, it is necessary to consider the position of children with all their characteristics and characteristics. Although children can determine their own steps based on their thoughts, feelings and will, their surroundings can influence their behavior. The development of drug abuse is increasing day by day and the government has issued regulations governing the handling of children who are perpetrators of drug abuse crimes, namely Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. While children who are perpetrators of criminal acts or crimes are regulated in Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, while children as victims are regulated in Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.³

In the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 59 states that: "Article 59 (1) The Government, Regional Governments, and other state institutions are obliged and responsible for providing Special Protection to Children. (2) Special Protection to Children as referred to in paragraph (1) is given to: a. Children in emergency situations b. Children in conflict with the law c. Children from minority and isolated groups d. Children who are exploited economically and/or sexually e. Children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances, etc."⁴

Law Number 35 of 2009 concerning Narcotics has regulated criminal provisions for anyone who can be subject to criminal penalties along with fines that must be borne by drug abusers or can be called perpetrators of drug crimes. In the Narcotics Law itself, there is no specific distinction between perpetrators of drug crimes. Both perpetrators who order to do

¹Barda Nawawi Arif, *Several Aspects of Criminal Law Enforcement and Development Policy*, PT Citra Aditya Bagti, Bandung 1998, page 153

²Abdussalam, *Child Protection Law*, Restu Agung, Jakarta, 2007, page 5.

³Maidin Gultom, *Legal Protection for Children*. Bandung PT Refika Aditama 2018. Pages 113-135.

⁴Lilik Mulyadi. *Juvenile Courts in Indonesia and Their Theory, Practice and Problems*. Bandung. Mandar Maju. 2005 page 133.

it, those who participate in doing it and advocates or assistants can be called perpetrators of criminal acts.⁵

In Law Number 35 of 2009 concerning narcotics, Article 112 states:

- (1) Any person who without rights or against the law possesses, stores, controls, or provides Class I Narcotics that are not plants, 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 IDR 800,000,000.00 (eight hundred million rupiah) and a maximum of IDR 8,000,000,000.00 (eight billion rupiah).
- (2) In the case of the act of possessing, storing, controlling or providing Class I Narcotics other than plants as referred to in paragraph (1) weighing more than 5 (five) grams, the perpetrator shall be punished with life imprisonment or a minimum of 5 (five) years and a maximum of 20 (twenty) years imprisonment and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

On the other hand, currently in Indonesia, the implementation of the juvenile criminal justice system is based on the Juvenile Criminal Justice System Law (Law No. 11 of 2012). In this Law, children in conflict with the law are handled by prioritizing or being diversionary.⁶ Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is:⁷

1. At the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted.
2. Diversion as referred to in paragraph (1) is implemented in cases where the crime is committed:
 - a. Threatened with imprisonment of less than 7 (seven) years; and
 - b. Not a repetition of the crime.

Related to decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj, which State Child Muhammad Pajar is guilty of committing a narcotics crime as regulated and is subject to criminal penalties in First, Article 114 Paragraph (2) in conjunction with Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics in conjunction with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.⁸

That in the case of a criminal act committed by a child, the Public Prosecutor has charged him with an alternative charge, so that the Judge, taking into account the legal facts above, directly chose the first alternative charge as regulated in Article 114 Paragraph (2) in conjunction with Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics

⁵Rosidah, Nikmah and Rini Fathonah. 2019. Juvenile Justice Law. Bandar Lampung: Zam-Zam Tower. page 91.

⁶The Diversion Process is carried out through deliberation involving the Child and his/her parents/guardians, the victim and/or his/her parents/guardians, Community Guidance Officers, and Professional Social Workers based on a Restorative Justice approach.

⁷Samosir, Djisman. 1982. The Function of Prison Punishment in the Convict Development System in Indonesia. Jakarta: Pradnya Paramita page 72.

⁸Siregar, Bismar. 1986. Legal Justice in Various Aspects of National Law. Jakarta: Rajawali.

in conjunction with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.⁹

According to Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it states that Children in Conflict with the Law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Then Article 3 states that Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime and if connected with the Decision of the Supreme Court of the Republic of Indonesia Number: 1398 K/Pid/1994 dated June 30, 1995, the terminology of the word "whoever" or "hij" as anyone who must be made a Child.

Basically, every person as a legal subject (supporter of rights and obligations) can be made a Child in conflict with the law. This is because every person is considered capable of taking legal action unless the law determines otherwise.¹⁰

Meanwhile, regarding whether or not they can be held accountable, this will be proven further based on the facts in the trial regarding the main case and regarding the Child. Therefore, related to this element, it only needs to be proven whether the Children are legal subjects (supporters of rights and obligations) and they have been properly made as Children in this case, in the sense that they are the people referred to as Children in conflict with the law in the Public Prosecutor's Indictment.

Meanwhile, regarding whether or not he can be held accountable, this will be proven further based on the facts in the trial regarding the main case and regarding the Child. Therefore, related to this element, it only needs to be proven whether the Child is a legal subject (supporter of rights and obligations) and he has been properly made a Child in this case, in the sense that he is the person referred to as a Child in the Public Prosecutor's Indictment.¹¹

then to fulfill the provisions of Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states The judge is obliged to consider the social research report from the Community Guidance Officer before making a decision on the case, then the judge after hearing the recommendations and conclusions of the Class I Medan Community Guidance Officer which were read out in court, the main point of which is that the child be given the lightest possible punishment or the child be returned to his parents in accordance with Article 71 and Article 82 Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.¹²

In this case, it was revealed in court that the child was merely a victim of a trap set up by law enforcement officers who took refuge under the legal basis. Article 24 of the

⁹Usman, AH (2015). Legal awareness of society and government as a factor the establishment of a state of law in Indonesia. *Journal of Juridika Insight*, 30 (1), pages 26-53.

¹⁰Sutarto, S. (2021). Implementation of Medical Rehabilitation and Social Rehabilitation for Victims of Drug Abuse Reviewed from the Theory of Relative Punishment. *Indonesian Law Enforcement Journal*, 2(1) pages 115-135.

¹¹Mukri, SG (2019). Educational Actions for Handling Drug Abuse. *IS*, 3 (1), pages 25-30.

¹²Eka Rose Indrawati. 2018. Job Training as a Criminal Sanction Against Children in Conflict with the Law. *Rechtidee*, Vol. 13, No. 1, June 2018. page 14.

Regulation of the Chief of Police Number 14 of 2012 concerning Investigation Management with undercover purchases in the investigation of narcotics crimes, namely the technique of disguising oneself as a prospective buyer (undercover buy) which is carried out to search for and collect evidence with which the evidence can shed light on narcotics crimes and to find the suspect..

Undercover purchases should target the arrest of drug dealers, especially on a large scale, and not target small-scale drug crimes, especially based on the legal fact that the child is not the target of the investigation, but the child is only influenced by the invitation of an adult, namely witness Teguh, with the promise of being invited to go clubbing for free, so that the child agrees to accompany witness Teguh to pick up narcotics that will be sold by witness Teguh to the police witnesses.¹³

The child in this case was also not directly involved in the crime of selling narcotics, because the child only agreed and consented that the witness Teguh would first pick up and then deliver the ecstasy narcotics to the buyer and after that they would club for free. so it is very unfortunate that this technique was used to make the Child a suspect when in fact the Child is not a drug dealer or dealer, but the Child is only a third grade vocational school student and the narcotics used as evidence in this case also do not belong to the Child but to witness Teguh who will be sold to police witnesses.

In the decision of the judge handling this case, taking into account Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the panel of judges issued a decision by ordering the child to...Muhammad Pajar, released from detention at the Temporary Child Placement Institution (LPAS) immediately after this verdict is pronounced.

From the description above, the author's desire arose to conduct a proposal study entitled Legal Protection for Children as Perpetrators of Narcotics Crimes as an Effort to Renew the Legal System in Indonesia (Study of Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj)

From the description of the problems above, we can draw the following problems which will be discussed in this research:

3. How is the Legal Protection for Children as Intermediaries in the Sale and Purchase of Narcotics in the Indonesian Legal System?
4. What are the legal considerations of the panel of judges in narcotics crimes against children in the Decision Study Number: 18/Pid.Sus-Anak/2023/PN.Bnj?

¹³Supriyanta. 2012. Democratization in Law Enforcement. Journal of Legal Discourse. Vol. VII No. 1 Year 2012. page 81.

METHOD

In conducting a scientific research, it is clear that a method must be used as a characteristic of science. The method contains the meaning of a way to find information in a planned and systematic way. The steps taken must be clear and there must be firm boundaries in order to avoid interpretations that are too broad.

1. Types of research

The type of research used is normative legal research, namely research that focuses on norms and this research requires legal materials as primary data.

2. Nature of Research

Meanwhile, the nature of the research that the author uses is descriptive analytical research in the sense that all legal materials that the author obtains will be described and explained and then analyzed.

3. Legal Materials

a. *Material Primary law is legal material that has binding force, namely in the form of statutory regulations such as:*

- 1. The 1945 Constitution of the Republic of Indonesia;*
- 2. Criminal Code*
- 3. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System*
- 4. Law Number 35 of 2014 concerning Child Protection*
- 5. UURI Number 35 of 2009 concerning Narcotics*
- 6. Law Number 8 of 1981 concerning Criminal Procedure Law*
- 7. Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj*

b. *Secondary legal materials are those that provide explanations to primary legal materials, including books, research results, legal opinions, and other documents that are relevant to the problem being researched.*

c. *Tertiary legal materials are supporting legal materials that provide guidance and understanding of primary and secondary legal materials, including legal dictionaries or other language dictionaries.*

4. Technique Collection of Legal Materials.

To answer the existing problems, researchers collect legal materials through document studies (literature studies) including primary legal materials, secondary legal materials and tertiary legal materials, namely by conducting an inventory and identification of a number of laws and regulations. document laws, legal notes, scientific works and reading materials/literature originating from legal science in the form of books, articles, journals and research results that are related to the research being raised.

RESULTS AND DISCUSSION

Legal Protection for Children as Intermediaries in the Sale and Purchase of Narcotics in the Legal System in Indonesia

To get answers to this legal issue related to legal regulations in criminal cases involving children in particular, on this occasion the author will explain among others:

a. Criminal Policy in the Indonesian Penal System

1) Said by Muladi and Barda Nawawi¹⁴ crime prevention policies or efforts that are an integral part or a complete part of efforts to protect the community (social defense) and efforts to achieve social welfare (social welfare) which are connected to each other in a criminal justice system with the aim of protecting society in achieving welfare. Furthermore, Sudarto provides an understanding that criminal policy or criminal policy is a rational and organized effort by a society to overcome crime, this definition is taken from the thoughts of Marc Ancel who formulated it as "the rational organization of the control of crime by society".¹⁵ Next is Mustofa's story¹⁶ say legal policy or legal politics. From the description above, it can be understood that criminal policy is the government's effort to regulate legal policies, including criminal policies in criminal law, so that the government's criminal policy is an integral part of the government's legal policy in national life.

2) *Implementation* Criminalization of Juvenile Delinquency in the Formulation of Criminal Offenses in the Juvenile Justice System Law

Schools saying "The law is er, doch het moet wordsen gevonden", which means it is an illusion if we assume that positive law or the Constitution has completely regulated all life's problems.⁹ This adage, if interpreted, means that a law cannot possibly completely regulate a problem, so that in this case, the regulation of criminal law outside the Criminal Code is a policy to fulfill legal needs and ideals.

Criminal policy efforts by formulating a child's actions in this case for example against juvenile delinquency into a criminal offense is an effort known as Criminalization¹⁰ on the other hand efforts to eliminate criminal acts into ordinary actions are commonly known as decriminalization¹¹. Sudarto said as quoted by Muladi mentioning the pouring of a type of crime or Criminal is an effort of Criminalization or the process of determining a person's actions as an act that can be punished. The process ends with the formation of a law, where the act is threatened with a sanction in the form of a criminal offense.¹²

In the effort to criminalize an act or action into a criminal act, two basic questions arise, namely: 1). What act should be a criminal act and 2). What sanctions should be imposed on the Violator.¹³

Another thing that is also very crucial or important to note in the formulation

¹⁴Barda Nawari Arief, 2001, Problems of Law Enforcement and Crime Prevention Policy, Citra Aditya Bakti, Bandung, page 2.

¹⁵Eddy OS Hiariej, 2009, Principles of Legality and Legal Discovery in Criminal Law, Erlangga, Jakarta. Page 55.

¹⁶Sudarto, 1981, Law and Criminal Law, Bandung, Alumni, page 38.

of criminal offenses in laws outside the Criminal Code is that the formulation must be in accordance with the genus norm or general norms contained in the Criminal Code¹⁴: 1) The nature of the act, whether it is against the law or a criminal act; 2). Criminal liability or error and 3). Sanctions, both criminal and other actions that can be imposed along with the principles of criminal law that underlie them.¹⁷

Based on the description above, the author can conclude that the legal regulation of acts or actions as a criminal offense outside the Criminal Code or commonly known as Criminalization is a form of government criminal policy. where in the formulation must be in accordance with the Genus Norm or general norm, namely the Criminal Code which indicates the formulation of criminal offenses in a Law outside the Criminal Code including in this case the Law on the Child Criminalization System (SPPA) and the Narcotics Law which has been specifically regulated which is an integral part of the criminal subsystem (Criminal justice System) and the implementation of this government criminal policy is an implementation or manifestation of the principle of criminal legality *nullum delictum nulla poena sine praevia lege poenali*.

In understanding the application of criminal sanctions to children, the basic things that need to be understood are:

1. Age Limit for Criminal Responsibility of Children, referring to Article 1 number (3) of the Law on the Juvenile Criminal Justice System, states that "Children in Conflict with the Law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of committing a crime." From the formulation of the address norm of the article, it can be understood that the minimum and maximum limits are that the age of children who are in conflict with or in conflict with the law is 12 years to 17 years or at least not yet 18 years old. These minimum and maximum limits are an affirmation of the norm's command regarding the age limit for criminal responsibility of children, where the minimum and maximum limits in the material content of the norm are cumulative and alternative in their application;

The implementation of Child Criminalization in Indonesia has gone through several phases, including: a. The Circular Letter of the Supreme Court Number 800 of 1959;¹⁶ b. The Instruction of the Supreme Court MA/Pemb/048/71 of 1971¹⁷ c. The Circular Letter of the Attorney General Number P. 1/20 issued on March 30, 1951¹⁸, d. The Law of the Republic of Indonesia Number 3 of 1997;¹⁹ e. The Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Based on the description above, it can be clearly and explicitly concluded that the phasesThe implementation phase of child criminalization practices develops and moves dynamically according to the situation and needs of the law itself, where currently the direction of the government's Criminal Policy in the Child Criminal Justice System is oriented towards special protection and/or carried out with a child welfare approach. This is

¹⁷SR Sianturi, 1986, Principles of Criminal Law in Indonesia and Their Implementation, Alumni AHAEM- PTHAEM, Jakarta, p. 211

done because in essence children are unable to avoid problems independently so that the role of all parties or cross-sectors including the method of sanctions given to children is not only punishment or punishment but prioritizes the development side with the hope that in the future children who are in conflict with the law after serving their sentence can return to normal activities and are able to develop as valuable assets for the country.

Seeing the description above, it is very clear that the impact of drug abuse is very dangerous for a nation, so that the government with the authority it has is very right to determine the abuse or distribution of narcotics without rights and against the law into a criminalization policy by issuing Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics related to narcotics crimes by children including narcotics intermediary crimes involving children as perpetrators, then as the principle of *lex Specialist Drogat Lex Generalis* (Special Law Overrides General Law) Juncto the principle of *Lex Posterior Derogat Legi Priori* (the new law overrides the old law).¹⁸

Therefore, the handling of cases involving children in conflict with the law, including cases involving the sale and purchase of narcotics by children, is legally subject to the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as stated in Article 69 paragraph (1) of the Republic of Indonesia Law Number 11 of 2012 concerning the Criminal Justice System, which states "Children can only be sentenced to criminal penalties or be subject to action based on the provisions of this Law.

Based on the description above, as with the legal issue in the first point in this formulation, the Regulation of Criminal Law in Cases of Narcotics Abuse Crimes by Children in Conflict with the Law, it can be concluded that the government's legal regulation of Narcotics Crimes by Children is carried out based on the government's criminal policy, namely that in handling criminal cases involving children, including the crime of intermediary for the sale and purchase of Narcotics by children, an examination is carried out according to the Law applicable to the Juvenile Criminal Justice System as regulated in Article 69 paragraph (1) of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

b. Legal considerations of the panel of judges in narcotics crimes against children (study on Decision Number 18/Pid.Sus-Anak/2023/PN Bnj)

Here the judge can choose from two options submitted by the Public Prosecutor to be considered, whichever direction the charges are, based on the facts revealed in the trial. The judge chooses the second option after observing and scrutinizing the facts revealed in the trial. for that it will be proven whether the Child has committed an act or crime as formulated and threatened with criminal penalties in Article 112 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), with the following elements: Element of Every Person, element Without rights or

¹⁸Muammar, Criminology Study of Narcotics Distribution (A Study in East Aceh District), Vol. 7 No. 1, January 1, 2019. p. 93

against the law, element of possessing, storing, controlling, or providing Class I Narcotics not plants and element carried out by the child.

Regarding these elements, the Judge considered the following:

1. Every Person's Element

It is the person as the legal subject (the Child himself) that all the identities read out from the Public Prosecutor's indictment in this case are appropriate and have been confirmed by the Child.

The Child (Muhammad Pajar) was brought forward in this case, and during the trial it was proven that the Child was physically and mentally healthy and was able to be held responsible for his actions, so the Judge was of the opinion that the Element of Every Person had been legally fulfilled.

According to Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it states that Children in Conflict with the Law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts, then Article 3 states that Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime and if connected with the Decision of the Supreme Court of the Republic of Indonesia Number: 1398 K/Pid/1994 dated June 30, 1995, the terminology of the word "whoever" or "hij" as anyone who must be made a Child. Basically, every person as a legal subject (supporter of rights and obligations) can be made a Child in Conflict with the Law. This is because everyone is considered capable of taking legal action unless the law determines otherwise.¹⁹

2. Elements without rights or against the law

Without any right or against the law, offering for sale, selling, buying, receiving, becoming an intermediary in buying and selling, exchanging or handing over class I narcotics in the form of plants weighing more than 1 (one) kilogram or more than 5 (five) tree trunks or in the form of Not a Plant Weighs 5 (Five) Grams. IThe term without rights or against the law is also called the term *wederrechtelijk*, "according to Drs. PAF Lamintang, SH, in his book *Basics of Indonesian Criminal Law*, this *wederrechtelijk* includes the following definitions: Contrary to objective law, contrary to the rights of others or, without rights that exist in a person or, without authority.

In the provisions of Law Number 35 of 2009 concerning Narcotics, there are provisions that in the circulation, distribution and/or use of Narcotics, special permission or approval from the Minister as the authorized official must be obtained upon the recommendation of the Food and Drug Supervisory Agency (Vide: Article 8 Paragraph (1) Jo Article 36 Paragraph (1) and Paragraph (3), Article 39 Paragraph (2) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics).²⁰

¹⁹Muammar, *Criminology Study of Narcotics Distribution (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019, page 71.

²⁰Muammar, *Criminology Study of Narcotics Distribution (A Study in East Aceh District)*, Vol. 7 No. 1, January 1, 2019.

Thus, the Judge is of the opinion that the Element Without Rights is part of the Element Against the Law, namely any act that violates written law (statutory regulations) and/or general principles of unwritten law. In this case, the Element Without Rights is without permission and/or approval from the authorized party for that, namely the Minister on the recommendation of the Food and Drug Supervisory Agency or other authorized officials based on Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics and other relevant Laws and Regulations.

Thus, the Judge is of the opinion that because the Child's daily work is not a job and does not have a special permit and/or approval from the authorized party for that (Minister of Health) so that the Child is not authorized or does not have the right based on the provisions of the applicable laws and regulations to control Class I Narcotics, not plants. Thus, based on the description, the Judge is of the opinion that the second element of Without Rights or Unlawfully has been legally fulfilled.²¹

In accordance with the explanation in Article 7 of Law Number 35 of 2009, narcotics can only be used for the benefit of health services and/or the development of science and technology. Furthermore, in Article 8 paragraph (2), in limited quantities, Class I narcotics can be used for the benefit of the development of science and technology and for diagnostic reagents, as well as laboratory reagents after first obtaining approval from the Minister on the recommendation of the Head of the Food and Drug Supervisory Agency.

Article 1 number 18 of Law Number 35 of 2009 concerning Narcotics states that Criminal Conspiracy is the act of two or more people who collude or agree to carry out, implement, assist, participate in, order, encourage, facilitate, provide consultation, become members of a Narcotics crime organization, or organize a Narcotics crime. The child's actions in agreeing to accompany witness Teguh to take ecstasy narcotics to sell have fulfilled all the elements of Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics. Therefore, the provisions regarding attempted criminal acts cannot be applied to the child.

The agreement or consent of the Child to accompany and assist witness Teguh to sell Class I Narcotics constitutes a criminal act of conspiracy to commit a narcotics crime as referred to in Article 114. Law Number 35 of 2009 concerning Narcotics so that with the existence of a joint intention or mutual agreement between the Child, witness Teguh and witness Rahma Agung Satria to sell Class I Narcotics has shown that the Child's actions are the actions of two or more people with the intention of agreeing to commit a crime. Thus the element of "evil conspiracy to commit a Narcotics crime as referred to in Article 114" has been fulfilled.²²

Because all the elements of Article 114 Paragraph (2) Jo Article 132 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law No. 11 of 2012 concerning

²¹Muammar, Criminology Study of Narcotics Distribution (A Study in East Aceh District), Vol. 7 No. 1, January 1, 2019.

²²Muammar, Criminology Study of Narcotics Distribution (A Study in East Aceh District), Vol. 7 No. 1, January 1, 2019

the Juvenile Criminal Justice System has been fulfilled, then the Child must be declared to have been proven legally and convincingly to have committed the crime as charged in the first alternative charge.

But in his decision The judge will implement the Juvenile Criminal Justice System which must prioritize the Restorative Justice approach which resolves criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not retaliation based on the principle of deprivation of liberty and punishment as a last resort.

In order to fulfill the provisions of Article 60 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that before making a decision, the Judge shall give the parents the opportunity to express matters that are beneficial to the Child, then after the Judge gave the opportunity, the Child's parents said that the best thing for the Child was to be returned to the Parents so that the Child could continue his education, which is currently in class 3 at the Yayasan Perguruan Harapan Vocational School. Then in court, the Child's parents said that they had realized their mistake because they had been negligent in looking after and guiding the Child and also promised to supervise the Child even more in the future and would carry out their full responsibilities as parents to the Child.

In order to fulfill the provisions of Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that the Judge is obliged to consider the community research report from the Community Guidance Officer before making a decision on the case, in accordance with Article 71 and Article 82 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, because currently the Child is still an active student and is currently in class 3 of vocational school and also states that the Child's parents are still able to provide the Child's rights and are fully responsible for the Child's growth and development, including carrying out better supervision in the future.

In further consideration, then the Judge does not agree with the demands of the Public Prosecutor as in his indictment which is not in line with the Principles and Objectives of the Child Criminal Justice System Law, nor does he pay attention to the facts revealed in court that the Child is only a victim of a trap by law enforcement officers who are protected under the legal basis of Article 24 of the Regulation of the Chief of Police Number 14 of 2012 concerning Investigation Management with undercover purchases in the investigation of narcotics crimes, namely the technique of disguising as a prospective buyer (undercover buy) which is carried out to find and collect evidence with which evidence makes clear the narcotics crime and in order to find the suspect, undercover purchases should target the arrest of narcotics sellers and especially on a large scale and not target narcotics crimes on a small scale, especially based on the legal fact that the Child is not the target of the investigation but the Child is only influenced by the invitation of adults.

So it is very unfortunate that this technique is used to make a child a suspect when

in fact the child is not a drug dealer or dealer, but rather the child is only a student.

Criminal acts or sanctions imposed on the Child, in Article 1 number 3 of Law Number 11 of 2012 concerning the Child Criminal Justice System. Namely, a Child in conflict with the law, hereinafter referred to as a Child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.

From the existing legal facts, the Child has been proven to have committed a crime in accordance with the Public Prosecutor's Indictment. It has also been proven that the Child was born on August 6, 2001, so that at the time the Child committed the crime the Child was around 17 (seventeen) years and 8 (eight) months old, so that it is still classified as a child's age according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, then the Child can be categorized as a "Child in conflict with the law" as referred to in Article 1 number 3 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.²³

Against the Judge's Decision Ordering the Child Muhammad Pajar, released from detention at the Temporary Child Placement Institution (LPAS) immediately after this decision is pronounced and Based on the matters considered above, the imposition of a criminal sentence on the Child below by the Judge is deemed to be in accordance with the purpose of punishment, namely not as revenge or sorrow, but rather to educate and make the Child aware of his wrongdoings, in addition to that so that it can also be used as a lesson for other people and even all members of society so that they do not commit acts as have been committed by the Child.

In order to impose a criminal penalty on a child, it is necessary to first consider the aggravating and mitigating circumstances of the child:

Aggravating circumstances:²⁴

- a. The actions of children are very contrary to the government's program which is currently aggressively eradicating drug abuse.
- b. Children's actions can damage the nation's future generations and threaten national defense and resilience.
- c. Children's actions include actions that disturb society.

Mitigating circumstances:

- a. The child has never been punished; - Children behave politely in court.
- b. The child is still young and is expected to improve himself in the future.
- c. The child regrets his actions and promises not to repeat the unlawful actions again.
- d. The Child Family is ready to guide and educate the Child better.

Taking into account, Article 112 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and the

²³Muammar, Criminology Study of Narcotics Distribution (A Study in East Aceh District), Vol. 7 No. 1, January 1, 2019

²⁴Muammar, Criminology Study of Narcotics Distribution (A Study in East Aceh District), Vol. 7 No. 1, January 1, 2019

Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.²⁵

In the narcotics law, there is no age limit for narcotics crimes, so children can be punished according to the sanctions contained in the narcotics law.²⁶

The best treatment and priority must be given to children in conflict with the law because here we must consider the child's mental development if criminal sanctions are imposed that are not in accordance with the child's mental development. So in this case we must really pay attention to the future. No less important, we must know the child's environment, location, social status and how the child was raised in the midst of his family. Because wrong parenting has the potential to lead the child to act beyond his knowledge so that he is in conflict with the law.²⁷

Drug crimes committed by children must still be given sanctions to provide education to the child on how to be responsible for their actions. Children are assets for a country so that legal sanctions must be in accordance with the age, behavior and mentality of the child. Because this concerns the child himself, his future and social life. Rehabilitation is considered very necessary for the child about the dangers of narcotics.²⁸

Criminal liability for drug abuse by children has actually been regulated in the laws and regulations in Indonesia. However, the punishment of children must pay attention to the physical and moral aspects of the child. The physical appearance of the child can be seen from the child's mind and intelligence. The child's morals can be seen from his/her psyche, such as abnormalities, mental disorders, so that if the child experiences mental disorders like that, he/she will not be held legally accountable. To determine this legal liability, the judge will be very careful. Considering that if it is associated with the child committing the crime, it is a very important element, and must be resolved with legal accountability.²⁹

Law Number 11 of 2012 concerning the juvenile criminal justice system which has been in effect since July 30, 2014 is more nurturing and provides protection to children. Previously, sanctions for juvenile crimes always caused debate, because they had consequences for socialization, behavior or stigma in society towards the child. So Law Number 3 of 1997 concerning juvenile courts is no longer relevant.

Law Number 11 of 2012 concerning the juvenile criminal justice system which also has a double track system, which regulates criminal sanctions and actions. So that the sanctions imposed better reflect justice for the perpetrator and the victim.

²⁵Muammar, *Criminology Study of Narcotics Distribution (A Study in East Aceh District)*, Vol. 7 No. 1, January 1, 2019

²⁶I Wayan Govinda Tantra, I Made Minggu Widyantara and Luh Putu Suryani, *Criminal Liability of Children as Couriers in Narcotics Crimes*, *Journal of Legal Analogy*, Volume 2, Number 2, 2020

²⁷Samsul Arifin, *Criminal Liability for Children as Narcotics Couriers*, *Justitia Jurnal Hukum*, Volume 1 No. 6 April 2021 Print ISSN: 2579-9983, E ISSN: 25796380 pages 136-142.

²⁸Ni Kd Saras Iswari Gunnanda, *Criminal Liability of Children Who Use Narcotics*, *Kertha Desa Journal*, Vol. 9 No. 6, pages 66-73, P-ISSN: 2302-528X, E-ISSN: 2303-0593.

²⁹I Wayan Gede Phalosa Jitaksu Wahendra, I Wayan Parsa, "Criminal Accountability for Perpetrators of New Types of Narcotics Abuse Crimes in Indonesia". *Udayana University Law Students Scientific Journal* 8, No. 6 (2019).

Law Number 35 of 2014 concerning narcotics, although it does not specifically regulate criminal sanctions for children. However, in principle, sanctions are still given or charged in the narcotics article or law. But it must still consider the special provisions of criminal acts committed by children, namely Law Number 11 of 2012 concerning the juvenile criminal justice system.³⁰

CLOSING

Conclusion

Based on the discussion in the chapter above, the following conclusions can be drawn that (1) the government's legal regulation of narcotics crimes by children is carried out based on criminal policy or government legal policy, namely that in handling criminal cases against children, including the crime of intermediary for the sale and purchase of narcotics by children, an examination is carried out according to the applicable law on the Juvenile Criminal Justice System as regulated in Article 69 paragraph (1) of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This Criminal Policy is a grand design of the Indonesian Government's legal policy that recognizes children's human rights with the aim that children are the nation's capital assets that can be useful in the future, so that special regulations are needed in resolving cases that befall them. With the hope that the child can return to society as the nation's capital assets in the future. (2) The consideration of the Panel of Examining Judges at the Binjai District Court only imposed action on children. Muhammad Pajar, in the form of action of returning it to the parents and ordering the child Muhammad Pajar, released from detention at the Temporary Child Placement Institution (LPAS), in the decision, it is indicated that the decision was made based on considerations: the development of growth and development and the best interests of the child after serving his sentence, this is a form of manifestation of the state's presence in realizing protection, paying attention to the welfare of children as mandated in Law Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection in conjunction with Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Here the judge considers the elements, namely the element of every person, the element without rights or against the law, the element of possessing, storing, controlling, or providing Class I Narcotics other than plants and the element carried out by the child. With the consideration that the Child is able to be responsible, then it must be declared guilty by considering Article 82 paragraph (1) point a, then the Child should be given action in the form of being returned to the parents, so the Child has been detained in the Temporary Child Placement Institution (LPAS), and while the decision that will be imposed on him is the action of being returned to the parents. The detention that the Child has undergone has been sufficient to provide a lesson and deterrent effect for the Child and his parents with the hope

³⁰Asep Syarifuddin Hidayat, Samul Anam, Muhammad Ishar Helmi, Legal Protection for Children as Narcotics Couriers, SALAM; Journal of Social & Cultural Syar-i FSH UIN Syarif Hidayatullah Jakarta Vol. 5 No. 3 (2018), pp.307-330

that the Child and his parents will learn from the incident and try to be better and fight to continue the Child's education which was interrupted due to the detention carried out on the Child for the sake of the Child's future and the nation's generation.

Suggestion

It is suggested that related to the existence of criminal sanctions against children as perpetrators of drug abuse, the legal provisions of which are contained in Law Number 11 of 2012 concerning the Child Criminal Justice System. In the future, it is hoped that policy makers will form a special law which is more specifically related to criminal sanctions for child perpetrators of drug abuse. Against child perpetrators of drug abuse. The existence of Law Number 35 of 2014 concerning Child Protection which provides protection law against perpetrators of criminal acts. However, this law still has many legal gaps and legal ambiguities in its implementation and in the future there will be a legal product itself related to legal protection for children who abuse narcotics.

It is suggested that the imposition of criminal penalties on children by judges should be seen as being in accordance with the purpose of punishment, namely not as revenge or sorrow, but rather to educate and make children aware of their wrongdoings, in addition to that, so that it can also be used as a lesson for other people and even all members of society so that they do not commit acts as have been committed by the child.

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