

LEGAL PROTECTION FOR NARCOTICS ABUSER CHILDREN IN THE JUVENILE JUSTICE SYSTEM IN INDONESIA

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ABSTRACT

In the Indonesian juvenile justice system, children of drug abusers undergo trial. Despite undergoing trial, the children would still have to be protected. The legal protection to the children of narcotics abusers in Indonesia is regulated in the Act No. 35 of the Year 2014 on the Amendment of Act No. 23 of 2002 on Protection of Children, and the Act No. 35 of 2009 on Narcotics, as well as other technical regulations relating to narcotics abuser children. Protection efforts on children of drug abusers are carried out through surveillance, prevention, treatment, and rehabilitation. Factors inhibiting the legal protection of drug abuser children are, firstly, the lack of understanding of the law enforcement from the officers; secondly, the lack of understanding of the community; thirdly, the lack of facilities, especially in remote areas of Indonesia.

Keywords: Legal protection, Narcotics abuser children, Diversion

A. Introduction

Children are future of a nation. As the next generation, children need proper coaching and continuous protection for their survival, growth and development of the physical, mental, social, and protection of all the possibilities that would be harmful to them in the future. Narcotics and other illicit drugs become one of the triggers that damage children of the nation. Children often become targets of drug dealers, because children are still unstable and easily influenced, thereby they are potentially entangled in the abuse of illegal drugs such as narcotics.

Children of narcotics abusers are just victims. Therefore, the state should not impose penalties to them by equating between drug abuser children and adult criminals (narcotics abusers and traffickers). According to Arif Gosita, the child victim means a child who becomes a victim that suffers mental, physical and social loss because of the actions of other people or groups.¹ Narcotics abuser children certainly will suffer a loss of mental, physical and social.

In the juvenile justice system in Indonesia, drug abuser children remain on trial. The judicial process holds the legal accountability of the child. Despite undergoing trial, the child should still be protected. The following article will answer two questions. The first is what form of protection is provided in terms of the rules of the applicable laws in Indonesia. The second is what are the factors inhibiting legal protection to drug abuser children.

B. Forms of Legal Protection for Narcotics Abuser Children

Indonesia has the Act No. 35 of the Year 2014 on the Amendment of Act No. 23 of 2002 on Protection of Children (hereinafter referred to as the Child Protection Act), as a form of serious attention from the government in protecting the rights of children, including narcotics abuser children. The Child Protection Act has determined the existence of special protection for children who are victims of drugs, alcohol, psychotropic and other addictive substances abuses. The government and other state institutions are obliged and responsible to provide special protection to children, one of which is children who become victims of drug abuse (Article 67 paragraph (1) of the Child Protection Act).

In addition, Indonesia also has the Act No. 35 of the Year 2009 on Narcotics (hereinafter referred to the Narcotics Act), which provides that the government shall administer all activities related to narcotics including efforts to prevent the involvement of minors in the drugs abuse and illicit drugs trafficking. One of the preventions of young and school-age children in the abuse of narcotics is through education by means of introducing curriculum related to the risk and menace of narcotics from primary school to high school (Article 60 paragraph 2c of the Narcotics Act).

According to the Act, the Narcotics are classified into three groups as stated in Article 6 of the Act No. 35 of 2009. The classification of narcotics into three types is based on the level of drug efficacy, objectives, and the potential to create dependency. In the part of Explanation and Annex I of the Act No. 35 of 2009, definition and types of narcotics are mentioned. The types of narcotics are also mentioned in the Minister of Health Regulation No. 13 Year 2014 on the Changes of Narcotics Classification.

If a child has found guilty of misusing narcotics, then according to the rules, the child is required to be rehabilitated. Parents or guardians of minor narcotics addicts must report to the health center, hospital, and/or to institutions of medical rehabilitation and

¹ Arif Gosita, 1987, *Masalah Korban Kejahatan*, Akademika Pressindo, Jakarta, p. 161.

social rehabilitation that are appointed by the Government for the treatment and/or medication through medical rehabilitation and social rehabilitation (Article 55 paragraph 1 of the Narcotics Act). In 2002, data on narcotics cases involving the children are increased by 30% over the previous year.²

Given the diversity of rules governing the age limit of children, this paper uses criteria of child age based on the Law of Juvenile Criminal Justice System, which says that child offender in the case of drug abuse is between 12 to 18 years old. As for child victims of drug abuse, the child meant is under 18 years old.

Protection efforts on drug abuser children are carried out through the efforts of surveillance, prevention, treatment, and rehabilitation by the government and society. Surveillance and prevention are included in preventive efforts (prevention). Prevention efforts that can be done, among other things, are by controlling the circulation of all types of drugs and food. In Indonesia, an institution that is given special authority for this is Food and Drugs Inspection Agency (*Badan Pemeriksa Obat dan Makanan/BPOM*).

Law enforcement officials including the Indonesian National Police (POLRI) and the National Narcotics Agency (BNN) must perform regular surveillance of places that are considered vulnerable to circulation of narcotics, such as nightclubs, cafes, or gathering places for young people and adolescents.

Treatment of medication and rehabilitation become continued efforts when the drug abuse has occurred. In general, rehabilitation effort is divided into three stages, namely the stage of detoxification, the stage of rehabilitation, and the stage of development. The first is detoxification stage. That is a phase to eliminate toxins derived from narcotic substances in the body of the victim until it is completely removed from the body of the victim.

The second stage is the rehabilitation phase. This phase consists of mental rehabilitation and physical rehabilitation. The former provides counseling and guidance given by experts, such as doctors and psychiatrists. The latter performs physical activities to forget or keep away from dependence on drugs, such as sports, arts and courses. It is more to positive activities and to provide the creativity of the child victims of drug abusers, so as to forget or distance him/her from dependence on dangerous drugs that, although these efforts need a fairly long process.

The third is the development stage. It is a special coaching after the victim out of treatment and is declared cured. It needs the cooperation of parents, social workers and psychologists. This guidance includes fixing the attitudes and behavior of the victim who is disturbed by the influence of drugs, and preparation to return to society or social interaction. The drug abuser conditions tend to be different from those before taking the drugs, both psychologically and mentally, therefore the required coaching for their attitudes and behavior is hoped to recover their good personality in order to be able to return in social intercourse.

In terms of rehabilitation stages, the government provides social rehabilitation facility for former drug addicts. The rehabilitation processes are conducted by social rehabilitation institutions (Article 54-59 of the Narcotics Act). Furthermore, the legal protection given by the government to the narcotics abuser children is a form of special protection. What is meant by special protection is a protection carried out through the efforts of rapid handling, including physical, psychological, and social treatment and rehabilitation. Moreover, it includes the prevention of diseases and other health disorders. Psycho-social assistance at the time of treatment is conducted until the victims recover from the influence of narcotics. The special protection is also meant the provision of social assistance for children who come from poor families, by providing protection and assistance to any judicial processes.

Regarding the juvenile justice process for child narcotics abusers, since the enactment of the Act No. 11 of 2012 on the Juvenile Criminal Justice System, the settlement of child delinquency is obliged to use diversion system. According to Jack E. Bynum, diversion is an attempt to divert or channel out, youthful offenders from the juvenile justice system.³ It means that diversion is an action or treatment to divert or put the perpetrators of criminal acts of children, including narcotics abuser children, out of the normal justice system.

Many adverse effects to the children when they are placed on a regular criminal justice process, such as violence, either physical, psychological or sexual.⁴ Ordinary criminal justice process can be also etched on the memory of a child. Any negative effects can continue after the child is sentenced to punishment, such as continuous stigma from society.⁵

Diversion is very important to avoid children from various adverse effects as mentioned above. Diversion provides protection for children's rights.⁶ Therefore, the diversion is one way of legal protection for narcotics abuser children, to avoid children from the adverse effects of the criminal justice process, as stipulated in the Act No. 11 of 2012 on Juvenile Criminal Justice System.

² Mahdiah, 2002, *Hak Asasi Manusia untuk Anak Usia Sekolah Korban Narkoba*, Direktorat Jenderal Perlindungan HAM, Departemen Kehakiman dan HAM RI, Jakarta, p. 13.

³ Jack E Bynum, William E. Thomppson, 2002, *Juvenile Delinquency a Social Approach*, Allyn and Bacon, Boston, p. 430.

⁴ Paulus Hadisuprpto, 2003, *Pemberian Malu Reintegratif Sebagai Sarana Non Penal Penanggulangan Perilaku Delinkuensi Anak (Studi Kasus di Semarang dan Surakarta)*, dissertation on Law School, Diponegoro University, Semarang.

⁵ Apong Herlina, et.al., 2004, *Perlindungan Terhadap Anak yang Berhadapan Dengan Hukum, Manual Pelatihan untuk Polisi*, POLRI dan UNICEF, Jakarta, p. 101-103.

⁶ Beniharmoni Harefa and Vivi Ariyanti, 2016, *Seputar Perkembangan Sistem Peradilan Pidana Anak dan Tindak Pidana Narkotika di Indonesia*, Deepublish, Yogyakarta, p. 85.

C. Obstacles

Implementation of legal protection for narcotics abuser children is not as perfect as it has been determined. Several factors inhibiting the implementation of legal protection, among other things, are the first, the lack of understanding of law enforcement from the officers, that drug abuser children are just victims: the victim of wrong social promiscuity, the victim of a lack of parental attention, the victim of an unhealthy environment, the victim of illegal drug dealers. Therefore, it is not rare to find some cases where law enforcement officials implement the articles of criminalizing drug abuser children.

The lack of understanding of law enforcement from the officers has also influenced the process of diversion of the criminal case of drug abuser children. Diversion that should be used is often not enforced. Therefore, the opportunity for children to receive guidance is closed and he/she tend to be treated as the real potential criminals.

The second inhibiting factor is the lack of understanding from the community that drug abuser children are only a victim. People seem to equate drug abuser children as the real criminals, the same as adult perpetrators of narcotics criminals. Thus, the community understanding affects the protection of the law for the child, which results in a non-optimal outcome.

Negative stigma from society toward narcotics abuser children will close the opportunity for the child to return to his normal life. Negative stigma will only affirm that drug abuser children are the real criminals, and he/she is difficult or even can no longer be repaired. Only with the right understanding the community can provide a positive control to the child, in order for a child to avoid the abuse of narcotics.

The third limiting factor is the lack of facilities, especially in remote areas of Indonesia. Specifically in the rehabilitation stage, namely the phases of detoxification, mental rehabilitation, physical rehabilitation, physical training, and spiritual development are not always available in all areas in Indonesia. This could be due to Indonesian geographic factors, which consists of many islands. Thus, with this factor, the protection of drug abuser children is not optimal.

D. Conclusion

Narcotics abuser children are just victims. Therefore, it is improper for the State to provide punishment for them by equalizing drug abuser children with adult criminals (adult drug abusers and drug traffickers). In the Indonesian juvenile justice system, drugs abuser children remain undergo trial. Despite undergoing trial, drug abuser children are still entitled to get a legal protection.

The legal protection for narcotics abuser children in Indonesia is regulated in the Act No. 35 of the Year 2014 on the Amendment of Act No. 23 of 2002 on Protection of Children, and the Act No. 35 of 2009 on Narcotics, as well as various technical regulations relating on narcotics abuser children.

Protection efforts for drug abuser children are carried out through the means of surveillance, prevention, treatment, and rehabilitation. Efforts of rehabilitation comprise some phases, namely detoxification, rehabilitation, and development phases. Other forms of protection is a legal protection for narcotics abuser children, namely through the diversion program. Diversion is the transfer process of resolving criminal cases of children outside the normal criminal justice system to avoid many negative impacts of criminal justice for the children.

As for the inhibiting factors, there are several factors that limit the legal protection for narcotics abuser children. The first is the lack of understanding of the law enforcement from the officers. The second is the lack of understanding of the community. The third is the lack of facilities, especially in remote areas of Indonesia.

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